

AN  
A C C O U N T  
OF THE  
*TRIAL*  
OF  
THOMAS COOPER,  
OF  
*NORTHUMBERLAND*;  
ON A  
CHARGE OF LIBEL  
AGAINST THE PRESIDENT OF THE UNITED STATES;  
TAKEN IN SHORT HAND.  
WITH A PREFACE, NOTES, AND APPENDIX,  
BY THOMAS COOPER.

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Philadelphia:

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April 1800.

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## P R E F A C E.

I have looked over the following account of my trial: so far as my memory serves me, it is as accurate as such a publication can be, except perhaps in Mr. Rawle's reply; which without meaning to pay the Attorney General of the district, any unnecessary compliment, was in my opinion delivered in neater language than is reported here: the reporter accounts for this from the difficulty of hearing Mr. Rawle. I am pretty sure there is no substantial error in any part of the publication. I have thought it a duty to myself to add the notes and appendix; the public will judge of their contents.

The Citizens of this Country may learn some useful lessons from this trial; and principally, that if they mean to consult their own peace and quiet, they will hold their tongues, and restrain their pens, on the subject of politics: at least during the continuance of the SEDITION LAW; a Law, which I do not think "the powers that be," will incline to abolish. As it is, the plainest truths, and the most notorious facts, may be controverted and denied; and the innocent and well-meaning asserter of them, may be driven with impunity, to spend his time and exhaust his finances, in procuring proof strictly legal of what no man in common life pretends to doubt. Long before my trial I foresaw this: and stated as an instance in point, the very case of evidence that actually occurred respecting the claim of Robbins. (vide the essay on the Sedition Law, in my political essays.)

I was previously determined, not to be put to the trouble and expence of sending for evidence from Danbury to Charlestown; or to be kept under Dionysian tyranny, from court to court, and from term to term, with the sword of the law suspended over my head, defendant on the tender mercies of an *ex-officio* accuser to spare the thread. I preferred to ascertain whether the evidence that common sense would not reject, was likely to be admitted on a political trial. I preferred final to preliminary punishment, nor did I want to suffer the crafty malignant kindness of a *noli-prose qui* when my proofs were known to be compleat. Let the reader consider the danger of uttering a truth, when he finds that I could not substantiate the notorious affidavit of Jonathan Robbins, without sending 750 miles for the copy of a record, which Mr. Pickering so strangely omitted to procure. Reader, when you have perused this trial, shut the book, and reflect. *I dare not state the conclusions with which it is pregnant, but which must force themselves with melancholy conviction on your mind: ask yourself however, is this a fair specimen of the freedom you expected to derive, from the adoption of the Federal Constitution? And whether the Men who can sanction these proceedings, are fit objects of re-election?*

THOMAS COOPER.

Prison of Philadelphia, May 1st. 1800.

PROCEEDINGS  
IN THE  
CIRCUIT COURT  
OF THE  
United States,

HELD IN THE CITY OF PHILADELPHIA, FOR THE DISTRICT  
OF PENNSYLVANIA, APRIL 11, 1800.

*Against Thomas Cooper, Esq. of Northumberland, under the Act  
of Congress, passed July 14th 1798, intituled "An Act in ad-  
dition to the Act intituled "An Act for the punishment of  
certain crimes against the United States," commonly called  
the SEDITION LAW.*

**O**N Wednesday, the 9th of April 1800, Mr. Cooper was informed by Mr. Hall the Marshal of the Court, that a writ was issued against him for a libel. Mr. Hall wished to know when it would be convenient for Mr. Cooper to attend at judge Peters's on the occasion, and the next morning at 10 o'clock was fixed for that purpose. On attending there, judge Peters shewed Mr. Cooper a paper, of which the following is a copy: The publication of it appeared to be attested by John Buyers, Esq. of Sunbury in Pennsylvania\*.

TO THE PUBLIC.

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TO THE PRINTER.

SIR,

I should not condescend to answer *anonymous* slander, but the information on which the falsehoods contained in the following paragraph are grounded, must have been originally derived from the president himself. I cannot believe him capable of such misrepresentation, for I still think well of his intentions, however I may disapprove of his conduct: but the following narrative will shew that some of his underlings are capable of any thing.

\* The passages printed in italic in the last paragraph, were those selected for prosecution. The other assertions in this paragraph were not included in the indictment.

*From the Reading Weekly Advertiser of October 26, 1799.*

### COMMUNICATION.

"*Thomas Cooper's* address to the readers of the Sunbury and Northumberland Gazette of which he was editor, having been republished in this State, with an introduction, approbatory of the piece, a correspondent wishes to know if it be the same *Thomas Cooper*, an Englishman of whom the following anecdote is related? If it is, every paper devoted to truth, honour, and decency, ought to give it a thorough circulation.

"Not many months ago, it is said, a Mr. Cooper, an Englishman, applied to the President of the United States to be appointed "agent for settling the respective claims of the citizens and subjects of this country and Great-Britain." In his letter he informs the President that although (he Thomas Cooper) had been called a Democrat, yet his real political sentiments are such as would be agreeable to the President and government of the United States, or expressions to that effect. This letter was accompanied with another from Dr. Joseph Priestly, who did not fail to assure the President of the pliability of his friend Cooper's democratic principles.—The president, it is said, rejected Cooper's application with disdain, and Priestley's with still stronger marks of surprise, saying, it is said, as he threw the letter on the table, does he think that I would appoint any Englishman to that important office in preference to an American?—What was the consequence? When Thomas Cooper found his application for a lucrative office under our president rejected, he writes in revenge the address which appeared in print, and dr. Priestley exerted his influence in dispersing this very address, which he must know was the offspring of disappointment and revenge! ! !

"The address is as cunning and insidious a production as ever appeared in the Aurora or the old Chronicle, and as for impudence, it exceeds or at least equals, Porcupine himself. Priestley and Cooper are both called upon to deny the above narrative. A recourse to the letters themselves would establish the accuracy of this anecdote even to a syllable."

Yes; I am the THOMAS COOPER, alluded to; luckily possessed of more accurate information than the malignant writer of that paragraph, from whatever source his intelligence was derived.

About the time of the appointment of commissioners under the British treaty, doctor Ross, who had sedulously brought about an intercourse of civility between Mr. Liston and myself, urged me to permit him to apply on my behalf to that gentleman for one of the appointments that must then take place. He pressed on me the folly, as he termed it, of my confining myself to Northumberland, his earnest wish to see me settled in Philadelphia, and the duty I owed my family to better my situation by every means in my power. He stated that mr. Liston he knew thought highly of me, and though the post of the fifth commissioner was probably then disposed of, there must be an agent for the British claimants; an office which from my situation as a barrister in England, and my knowledge of mercantile trans-

actions, I was peculiarly fitted to fill. I replied that he probably over-rated Mr. Liston's opinion, and his own influence, and that at all events my known political opinions must render it equally improper for Mr. Liston to give, and for me to accept, any office whatever connected with the British interests. That Mr. Liston and I understood each other on this question, and had hitherto avoided all politics whatever. That being an American I should not object to any office under *this* government, if I could fairly obtain it; but that I would never consent to any application to Mr. Liston.

Through Mr. Coleman's interest, Mr. Hall of Sunbury, was complimented with the offer of being appointed agent of American claims. On mentioning to Dr. Priestley one night at supper that Mr. Hall had declined it, Dr. Ross's persuasions occurred to me, and I said that such an office as that would have suited me very well. Dr. Priestley replied if that was the case, he thought he had some interest with Mr. Adams, with whom he had long been acquainted, and who had always expressed himself in terms of the highest friendship: that as he never intended to ask any favour of Mr. Adams for himself, I might as well let him try for once to ask one for me. On my objecting that Mr. Adams's politics and mine were probably very different, Dr. Priestley declared that this so far from being an objection, might be an inducement in my favor; for if Mr. Adams meant to be the ruler of a nation, instead of the leader of a party, he would be glad of an opportunity to exhibit such an instance of liberal conduct. At length I consented, expressly requesting Dr. Priestley to take care that Mr. Adams should not mistake my politics. In consequence of this conversation Dr. Priestley wrote the following letter; not a few months, but above two years ago.

August 12, 1797.

Dear sir,

It was far from being my intention or wish to trouble you with the request of any favours, though it is now in your power to grant them; and it is not at all probable that I shall ever take a second liberty of the kind. But circumstances have arisen which I think call upon me to do it once, though not for myself but a friend. The office of agent for American claims was offered I understand to Mr. Hall of Sunbury, and he has declined it. If this be the case, and no other person be yet fixed upon, I shall be very happy if I could serve Mr. Cooper, a man I doubt not of equal ability and possessed of every other qualification for the office, by recommending him. It is true that both he and myself fall in the language of our calumniators, under the description of democrats, who are studiously represented as enemies to what is called GOVERNMENT, both in England and here. What I have done to deserve that character you well know, and Mr. Cooper has done very little more. In fact we have both been persecuted for being friends to American liberty, and our preference of the government of this country has brought us both hither. However, were the accusations true, I think the appointment of a man of unquestionable ability and fidelity to his trust, for which I would make myself answerable, would be truly such a mark of superiority to popular prejudice as I should expect from you. I therefore think it no unfavorable circumstance in the recommendation. That you

will act according to your best judgment I have no doubt, with respect to this and other affairs of infinitely more moment, through which I am persuaded you will bring the country with reputation to yourself, though in circumstances of such uncommon difficulty, perhaps with less ease and satisfaction than I could wish. With my earnest wishes for the honour and tranquillity of your presidency, I am, &c.

JOSEPH PRIESTLEY.

This letter was accompanied by the following from myself.

SIR,

On my expressing an inclination for the office which Mr. Hall has declined, Dr. Priestley was so good as to offer his services with you on my behalf.

Probably the office will be filled, 'ere this letter can reach you: probably there may be objections to nominating a person not a native of the country: probably *the objection mentioned by Dr. Priestley may reasonably be deemed of weight in my instance.* Be all this as it may, I see no impropriety in the present application, to be appointed agent of American claims, for it is still possible I may suppose more weight in the objections than they will be found to deserve. If it should so happen that I am nominated to that office, I shall endeavour to merit the character the doctor has given me, and your esteem. I am, &c.

THOMAS COOPER.

Is this the letter of a MAN, or not? I do not appeal to the cowardly propagator of anonymous falsehoods, but to the public. What is there in it, of vanity or servility? Do not these letters take for granted that I am a democrat, though not a disturber of all government; and that what I am I shall remain, even though it be deemed a *reasonable objection to my appointment?* Is this, or is this not, adhering to my principle, whatever becomes of my interest?

Nor is it true that my address originated from any motives of revenge. Two years elapsed from the date of those letters before I wrote any thing on the politics of this country. Nor did I recollect them at the time.—Nor do I see the objection to taking any fair means of improving my situation. This is a duty incumbent on every prudent man who has a family to raise, and which I have already too much neglected from public motives: nor can any office to which I am eligible in this country, recompence me for the offers I rejected in its favour. But it is not in the power of promises or threats, of wealth or poverty, to extinguish the political enthusiasm which has actuated my conduct for these twenty years.—The prudence of middle age and the claims of duty may make me cautious of sacrificing my interest, but they cannot induce me to sacrifice my principle.

*Nor do I see any impropriety in making this request of Mr. Adams. At that time he had just entered into office; he was hardly in the infancy of political mistake: even those who doubted his capacity, thought well of his intentions.* He had not at that time given the public to understand that he would bestow no office but under implicit conformity to his political opinions. He had not declared that “A Republican Government may mean any thing;”

he had not yet sanctioned the abolition of trial by jury in the alien law, or entrenched his public character behind the legal barriers of the sedition law. *Nor were we yet saddled with the expence of a permanent navy, or threatened under his auspices with the existence of a standing army.* Our credit was not yet reduced so low as to borrow money at 8 per cent in time of peace, while the unnecessary violence of official expressions might justly have provoked a war. Nor had the political acrimony which still poisons the pleasures of private society been fostered by those who call themselves his friends and adherents; nor had the eminent services of Mr. Humphreys at that time received their reward. *Mr. Adams had not yet projected his Embassies to Prussia, Russia, and the Sublime Porte; nor had he yet interfered as President of the United States to influence the decisions of a Court of Justice.* A stretch of authority which the Monarch of Great Britain would have shrank from; an interference without precedent, against law and against mercy! This melancholy case of Jonathan Robbins, a native citizen of America, forcibly impressed by the British and delivered up with the advice of Mr. Adams to the mock trial of a British court martial, had not yet astonished the republican citizens of this free country. *A case too little known, but which the people ought to be fully apprized before the election, and they shall be.*

Most assuredly had these transactions taken place in August 1797, The President Adams would not have been troubled by any request from

THOMAS COOPER.

NORTHUMBERLAND, Nov. 2, 1799.

Mr. Cooper gave bail for his appearance at the ensuing court, himself in 1000 dollars, and Israel Israel, esq. in the like sum.

On the second day of the court (Saturday) the grand jury found the following bill of indictment (presented *ex officio* by William Rawle, esq. the United States' attorney for the district of Pennsylvania) a true bill.

CIRCUIT COURT of the United States for the Pennsylvania district,

April term, 1800.

The United States }  
vs. } Indictment for a seditious libel.  
Thomas Cooper, }

### INDICTMENT.

The grand inquest of the United States of America, in and for the Pennsylvania district, upon their respective oaths and affirmations, do present, that Thomas Cooper, late of the district of Pennsylvania, attorney at law, being a person of a wicked and turbulent disposition, designing and intending to defame the President of the United States, and to bring him into contempt and disrepute, and to excite against him the hatred of the good people of the United States, on the 2d of November, 1799, in the district aforesaid, and within the jurisdiction of this court, wickedly and maliciously did write, print and publish a false, scandalous and malicious writing against the said President of the United States of the tenor and effect following, that is to say:—“Nor do I [himself the said Thomas Cooper meaning] see any impropriety in making this request of Mr. Adams: [meaning John Adams, esq. President of the United States] at that time he had just entered into office, he [meaning the said President of the United States] was hardly in the infancy of political mistake: even those who

doubted his capacity [meaning the capacity of the said President of the United States] tho't well of his [meaning the said President of the United States] intentions. And also the false, scandalous and malicious words of the tenor and effect following, that is to say :—Nor were we [meaning the people of the United States] yet saddled with the expence of a permanent navy, or threatened under his [meaning the said President] auspices with the existence of a standing army. Our credit [meaning the credit of the United States] was not yet reduced so low as to borrow money at eight per cent. in time of peace, while the unnecessary violence of official expressions might justly have provoked a war.

And also the false, scandalous and malicious words of the tenor and effect following, that is to say :—Mr. Adams [meaning the said President of the United States] had not yet projected his [the said President of the United States meaning] embassies to Prussia, Russia and the Sublime Porte, nor had he [the said president of the United States meaning] yet interfered as president of the United States to influence the decisions of a court of justice—a stretch of authority which the monarch of Great Britain would have shrank from—an interference without precedent, against law, and against mercy. This melancholy case of Jonathan Robbins, a native citizen of America, forcibly impressed by the British, and delivered up with the advice of Mr. Adams [meaning the said president of the United States] to the mock trial of a British court-martial had not yet astonished the republican citizens of this free country ; [meaning the United States of America] a case too little known, but of which the people [meaning the people of the said United States of America] ought to be fully apprized before the election, and they shall be,”—to the great scandal of the president of the United States—to the evil example of others in the like case offending against the form of the act of the congress of the United States in such case made and provided, and against the peace and dignity of the said United States.

W. RAWLE, Attorney-General.

JOHN BUYERS, esq.

Witness,

D. CALDWELL.

To this bill of indictment Mr. Cooper put in the plea of *not guilty*, and also pleaded the truth of the facts in justification. He directed subpoenas to be issued for the President of the United States, for Timothy Pickering Esqr. Jacob Wagner, (a clerk in Timothy Pickering's office,) and John Davenport Esqr. Member of Congress. Previous to directing the Subpoenas, he stated to the court, that he understood it had been customary, and was considered as a proper practice to prevent any question arising on the subject of privilege, that when a member of the Legislature was intended to be subpoenaed during session, for the court from whence the subpoena issued, to write to the Speaker of the House requesting that the House would permit the process to be served. If that were the practice, Mr. Cooper begged the court would be pleased to conform to it in the present instance on his behalf.

Judge Chase. I know of no such practice and no such privilege. I do not know that any such privilege is given by the Constitution, and if it be

not given there, I cannot give it. I do not like setting precedents of this nature. The court will do its duty, and direct process to be issued upon any man whatever his situation may be, if the law does not exempt him from it : I shall certainly write no such letter.

*Mr. Rawle.* I believe Sir, the practice has been to apply in that manner. I believe the Judges of the supreme court of this state after deliberation, determined on the expediency of proceeding in that way to avoid giving occasion for any dispute on the subject.

*Judge Peters.* When I was the Speaker of a single Legislature, I have had letters of that kind addressed to me for a similar purpose.

*Mr. Dallas.* I beg leave to suggest to the court, that the practice of writing to the Speaker in such a case was adopted to avoid the difficulty that might arise from the clashing of jurisdictions : If a subpoena were served on a member of the Legislature during session, and he did not choose to attend, the next process of the court (if prayed for,) must be attachment ; and attachment cannot be enforced without arrest : But the members of the Legislature are privileged from arrest during session.

*Judge Chace.* Sir, the court thank you for your suggestion as *Amicus Curiae* ; but we should take care to avoid this clashing of jurisdictions. If the member subpoenaed during the session would not attend, we would issue no attachment, we would put off the cause till his attendance could be compelled. Mr. Cooper may take out his subpoena's, we shall write no such letter.

*Judge Peters.* I wish it to be understood that in my opinion, no such process ought to issue to members of the Legislature during session ; for I do not approve of issuing process which we cannot enforce.

Mr. Cooper on coming into the court on Wednesday morning (the time appointed for bringing on the trial,) enquired if his subpoena's had been served, and particularly the subpoena directed to the President of the United States.

*Judge Chace.* No Sir ; the clerk of the court shewed us your directions to him, to subpoena the President of the United States, and we directed him not to issue the subpoena ; we thought the proceeding very improper.

*Mr. Cooper.* Will the Court have the goodness to hear me on that question ?

*Judge Chace.* Certainly Sir ; go on.

*Mr. Cooper.* I did not expect (may it please the court) that any objection would have been made to issuing this process to procure the attendance of the President. It is the duty of every good citizen for the furtherance of justice, to give his testimony when duly called upon for that purpose by the process of a court of justice. Before I determined on applying for this subpoena, I examined (as it was my duty to do) the Constitution of the United States, to discover if any privilege of exemption from this process was given to the President by that Constitution : I could find none ; If the gentleman whose duty it is to conduct this prosecution, or the court will be kind enough to point out any such exemption, I shall most willingly retract my error : but if the Constitution and the laws of our country confer no such privilege on the President, it is not in the power of this court to supply what they have omitted : notwithstanding the application to the court on

Monday last, for a letter to the Speaker, proceeded from myself, I was glad to hear the opinion of your Honour that you would not undertake to confer privileges which the Constitution had not granted: if no such exemption then can be claimed in your opinion by any member of our Legislature, why should it be assumed by the President? if the Constitution does not give him this privilege of exemption, I may claim the subpoena as a matter of right.

There is a farther and a peculiar reason in this cause, why the President even if he had this privilege should not claim it as against myself; if I call him into this court, who compels me to do it? Himself. Who has he to blame for the trouble I may occasion him by his attendance here? Himself. The publication for which I am indicted is not a voluntary effusion, it was forced from me—I was compelled to write it in vindication of my own character, grossly and falsely attacked in consequence of a disclosure on the part of the President, of what I cannot but deem private correspondence. It is from information then, proceeding directly or indirectly from himself, that I was first compelled to appear before the public, and am now dragged into this court to vindicate my character against anonymous slander and legal accusation.—If for no other, for this reason may it please the court, in my opinion the President ought to appear. Nor in such a country as this, do I see why this exemption should be granted to one man and not to another. This is, and I hope, will long continue a republican country. A government of equal rights and equal Laws.—But the privilege now claimed is out of harmony with these equal principles of republican government; and I hope the decision of the court in the present case, will authorize us to believe that no man in this country, is possessed of a situation so elevated as to be above the Laws, or of any privileges paramount to justice.

*Judge Chace.* We have heard you Sir; patiently; and in consideration of your being without counsel, we have permitted you to say what we would not have suffered any counsel to advance: Sir, we consider your situation, but you have totally mistaken the whole business. It is not upon the objection of privilege that we have refused this subpoena: This court will do its duty against any man however elevated his situation may be.—You have mistaken the ground.—We are of opinion that in the case of a prosecution for a libel tending to bring the President of the United States into contempt, he cannot be compelled to appear at all. What? shall you bring the President on such an prosecution, into this court to prove your charges? to ask him, did you do so and so? were you guilty of maladministration? Sir, this cannot be permitted, and if you had been a lawyer you would not have made the request.

*M. Cooper.* I have great deference for the opinion of the Court, but this is a new point: will the Court be good enough to hear me upon it?

*Judge Chace.* No Sir; the Court will not hear you after they have given their decision: It was a very improper and a very indecent request.

*Mr. Cooper.* I assure the Court, I am not guilty of intentional impropriety. But a preliminary question will arise between Mr. Rawle and me not connected with the substance of the Indictment: cannot I have the benefit of the President's testimony on that question?

*Judge Chace.* No Sir; He cannot be brought here at all upon this Trial. Are you ready to proceed.

*Mr. Cooper.* I believe Sir, I shall be.

The Jury were then called, but before they were sworn, Mr. Cooper suggested to the court that some of the passages charged in the indictment were grounded upon certain addresses to the President in the summer of one thousand seven hundred and ninety-eight, and the answers thereto; that he had applied to Mr. Rawle to admit as evidence of those documents, the publications of them in the common news-papers; that he meant to use Feno's paper for the purpose; that Mr. Rawle at first consented, but had since written him a note retracting that assent, that if the court should decide when the cause had gone half thro', that such evidence on the part of the defendant was inadmissible, he would be compelled to move the court to put off the cause till he could procure the best evidence, the nature of the case would admit of, and which Mr. Rawle seemed to insist on, namely official copies of those documents.

*Judge Chace.* When the question comes before us we will consider it. In the mean time you must go on your own way and judge for yourself. But, Mr. Rawle, what objection have you to admit the news-papers to be read (that is so far as they are relevant to the question,) if you have no reason to suspect their accuracy?

*Mr. Rawle.* I beg leave to state to the court, that on Mr. Cooper's applying to me on this subject, I at first consented, but afterwards I retracted that consent for the reasons assigned in the following letter which I sent him,

Sir,

Upon further consideration of the request you made to me this morning as to admitting the printed addresses to, and answers from the President of the United States on your trial, I am apprehensive some inconvenience may result from it as it is impossible for me to be certain whether inaccuracy in some instances or design in others, may not have rendered the printed accounts unfaithful transcripts of the originals.

I am therefore under the necessity of recalling my assent, even under the limitations that were connected with it, and of informing you that the evidence necessary for your defence must be adduced in the usual and legal form.

I trust that so short a space of time has elapsed since our communication that no inconvenience to you will result from it, but should it be the case I shall make no opposition to a commensurate prolongation of the time previous to the trial, so that you may be as fully prepared as if the conversation of this morning had not taken place.

I am Sir,

your most obedient servant,  
W. RAWLE.

April 15th. 1800. four o'clock P. M.  
To THOMAS COOPER. Esq.

the court will see therefore that I cannot properly assent to the admission of evidence of this kind.

*Judge Peters.* It is quite time enough for us to decide this question when it comes regularly before us.

*Mr. Cooper.* If that be the case I must not in point of prudence subject myself to the hazard of being deprived of a most material part of my testimony on a legal objection; and tho' I think the evidence I offer could be legally supported, \* yet I must run no risk: I therefore pray the court to defer the trial until I can procure office copies.

*Judge Chace.* Will you be ready on Saturday Sir?

*Mr. Cooper.* If I can procure the copies I shall.

*Judge Chace.* Sir, that is not the question. If your evidence is not ready we shall judge of that, then.

*Mr. Cooper.* I shall be ready on Saturday.

The court met April 19th. at 9 o'clock.

*Mr. Cooper* addressed the court as follows,

The court may perhaps remember the proposals I made to the Attorney General respecting some public documents, which I meant to give in evidence as they were published in a news-paper wherein all the acts of government were usually inserted: that paper was Fenn's United States Gazette. The Attorney General † thought it his duty to object to this kind of evidence, since either from design or inaccuracy, mistakes might take place in the publications.

I was extremely desirous at that time to have met the charge substantially; the court however, thought Mr. Rawle might insist on my producing official copies of such documents as were necessary for my defence.

In conformity to this expectation, I have endeavoured to procure those copies without delay. Much of the supposed libel is founded on expressions contained in certain addresses to the President in the summer of one thousand seven hundred and ninety-eight, and his answers thereto. On the authority therefore of the case of the King vs. Holt, in 5th. term, reports page 442. I applied by letter to the Secretary of State, who returned for answer the next morning that there were none of those addresses or answers deposited in his office; on receiving this information I sent directly the following note to the President,

No. 61. Walnut near Dock Street.

Sir,

Being indicted for a supposed Libel in the circuit court of the United States now sitting in Philadelphia, I find it necessary to apply for official copies of the papers of which I transmit an inclosed list. I applied yesterday afternoon to the Secretary of State, who has just now sent me word they are not to be found in his office.

I beg therefore that your Excellency would have the goodness to direct your secretary to make them out for me as expeditiously as possible, and to accept of the present application as legal notice of my request.

I am,

your excellency's obedient servant,  
THOMAS COOPER.

to which I received no answer that day. The next morning conceiving there was a mode of expediting the business, I sent my son to purchase a

\* See the case of *Rex v Holt* 5 T. Rep. 442. hereafter quoted.

† Mr. Rawle did not understand at first as he afterwards informed me, that I meant to use Fenn's paper, or he would have admitted it.

book purporting to be "A selection of addresses and answers to and from the President of the United States in the year one thousand seven hundred and ninety eight," with this book I sent to Mr. Shaw, (the private secretary to the President,) the following note,

Mr. Cooper presents his respects to Mr. Shaw, and being desirous of saving time and trouble, takes the liberty of suggesting whether the collection of addresses and answers herewith sent, might not be collated with the originals, and then copies would only be necessary of those wanted by Mr. Cooper, which the volume does not contain.

Mr. Shaw returned the following answer :

Mr. Shaw informs Mr. Cooper, that he will not receive any information concerning answers to addresses from this house.

April 18th. 1800.

*Judge Chace.* I suppose you mean the President's house? was he there at that time?

*Mr. Cooper.* He was at the President's house.—Under the circumstances I have related, I do not think it possible for me safely to go on, while the person who may fairly be considered in some degree as my prosecutor, holds in his possession the legal evidence on which I must rest my defence. Nor indeed is Fenno's paper quite accurate, for in a collated copy, procured for me by Colonel Lyon from the office of the Secretary of War, I find manuscript corrections, altho' they are not very material.

I presume there is the same law for Mr. Rawle as for me, and as he objected to the production of news-paper evidence in the first instance, so may I, on the same grounds: therefore I move the court to put off the trial until I can procure the papers required.

*Judge Chace.* You are mistaken in supposing the prosecutor of this indictment is the President of the United States. It is no such thing.—It is at the suit of the United States you are indicted, for publishing a false scandalous and malicious libel, with intent to defame the President of the United States.—Nor do I understand that the Attorney General objected to your producing the testimony you mentioned.—But your mistakes must fall on yourself.—You must take the chance.—Nor had you a right to make these assertions unless you had proof that would bear you out in them.

If in making those assertions you relied on the public papers it was at your own risk; and it was your own fault not to have had authentic copies. You think that you have a right to obtain official copies of what may be necessary for your Defence, you are greatly mistaken, \*. No law that I know of, authorizes you to require them, and I see no reason why the proper officers should give copies.

You suppose that the offices of government ought to be open to your inspection—it is not so—even if you had these copies the court would determine on their admissibility as evidence. If you offer news-papers, the court will determine whether they can be given in as evidence or not. If

\* See the case of the ship *Columbus*, and the Act, quoted in the Appendix.

you wish to abide by your own judgment, you must stand or fall by it. But do not take it for granted that you may examine witnesses or produce evidence that has nothing to do with the cause.

*Mr. Cooper.* Since the court is of opinion that I cannot produce this evidence, which I consider as material to my Defence, and as I am not fully prepared for trial, expecting that I could obtain this evidence, I wish the trial to be put off on other grounds.

*Judge Chace.* If you can shew good grounds the court will consent to put it off.

*Mr. Cooper.* I have Subpoenaed several members of the Legislature, but I am apprehensive they deem it inconsistent with their duty to attend, and I am given to understand that there is a difference of opinion on this question: whether they will appear when called I know not. If they do not, I fear I cannot go on.

The court enquired of the Marshal whether he had Subpoenaed the witnesses? On being answered in the affirmative, they directed the witnesses to be called, viz.

+  
Timothy Pickering,  
Jacob Wagner,  
John Davenport,  
Albert Gallatin,  
Thomas Pinckney,

Robert Goodloe Harper,  
Edward Livingston,  
Colonel Matthew Lyon,  
John Langdon.

No one appeared.

*Court.* Mr. Pinckney has informed us that he will attend.

*Mr. Cooper.* As the evidence of some of these gentlemen is material, I wish the court to put off my trial, until I can procure their attendance.

*Court.* Sir you must move it upon affidavit, and then the court will consider of it. But take care it will justify you.

(The substance of the affidavit was: that the witnesses therein named who had been Subpoenaed and did not attend, were material witnesses, and who the Defendant understood and believed were capable of giving testimony of facts material to the issue joined).

After the affidavit had been read, the court said:

This affidavit is not sufficient, you do not state your reasons why you believe they are material witnesses. As you are without Counsel the court will shew you more indulgence. Had Counsel offered this affidavit we should not allow any explanatory affidavit to be made, but we shall allow you to make one. Therefore take time for your affidavit.

Whilst Mr. Cooper was preparing his affidavit, Judge Chace (after some conversation with a gentleman near him said) I am inclined to think the witnesses will all attend. Therefore call them, I am informed that they will all attend. Mr. Harper and Mr. Gallatin were in court, we had better send for them. We must no doubt pay attention to the conveniences of the house.

*Judge Peters.* If the gentlemen will voluntarily appear, it is well; if not, we cannot compel them.

*Court* (to the Marshall) Go and ask them if it is convenient to attend?

*Judge Peters.* I have seen several of them. They will attend. The officer says they will attend.

*Mr. Cooper.* If that be the case I have no objection; but as I did not expect my trial to commence this morning, my papers are not here. Will the court permit me to go for them?

*Court.* No doubt Sir, no doubt.

*Mr. Cooper* On his return into court said, I do not know whether the witnesses whom I have subpoenaed will attend or not, but at all events I am ready to go on upon the proofs I have.

*Court.* Call the Jury.

### NAMES OF THE JURY,

Andrew Whelen, *Foreman.*

Samuel Evans,

George Holsten,

Henry Pepper.

Abraham Bickley,

George Ellig,

Charles Deshler,

William Guier,

George Slough,

Ely Canby.

William Young,

Peter Shyner.

W. RAWLE, Attorney General

Began by observing that the Defendant stands charged with attempts which the practice and policy of all civilized nations has thought it right all times to punish with severity. With having published a false scandalous and malicious attack on the character of the President of the United States with an intent to excite the hatred and contempt of the people of this country against the man of their choice.

It was much to be lamented that every person who had a tolerable facility at writing should think he had a right to attack and overset those authorities and officers whom the people of this country had thought fit to appoint. Nor was it to be endured that foul and infamous falsehoods should be uttered and published with impunity against the President of the United States, whom the people themselves had placed in that high office, and in which he has acted with so much credit to himself and benefit to them. Thomas Cooper stands charged in the indictment as follows—(here the Attorney General read the indictment) It was a sense of public duty that called for this prosecution. It was necessary that an example should be made to deter others from misleading the people by such false and defamatory publications. There was a peculiarity in the manner also of this publication; we generally observe that persons who take these liberties, endeavour to avoid punishment by sheltering themselves under fictitious signatures or by concealing their names; but the Defendant acted very differently. Being of the profession of the law, a man of education and literature, he availed himself of those advantages for the purpose of disseminating his dangerous productions in a remote part of the country where he had gained influence. Such conduct must have arisen from the basest motives. It would be proved to the Jury that at the time of this publication, the Defendant went to a magistrate and acknowledged it to be his production in the same formal manner as if it had been a deed.

A conduct so grossly improper, had occurred in no instance within his recollection and the manner constituted no slight aggravation of the offence.

Indeed it was high time for the law to interfere and restrain the libellous spirit which had been so long permitted to extend itself against the highest and most deserving characters.

To abuse the men with whom the public has entrusted the management of their national concerns, to withdraw from them the confidence of the people, so necessary for conducting the public business, was in direct opposition to the duties of a good citizen. Mischiefs of this kind were to be dreaded in proportion as the country around is less informed, and a man of sense and education has it more in his power to extend the mischief which he is inclined to propagate. Government should not encourage the idea, that they would not prosecute such atrocious conduct, for if this conduct was allowed to pass over, the peace of the country would be endangered.

Error leads to discontent, discontent to a fancied idea of oppression, and that to insurrection, of which the two instances which had already happened, were alarming proofs, and well known to the jury.

That the jury, as citizens, must determine whether from publications of this kind the prosperity of the country was not endangered ; and whether it was not their duty, when a case of this nature was laid before them and the law was applicable, to bring in such a verdict as the law and the evidence would warrant ; and shew, that these kind of attacks on the government of the country, were not to be suffered with impunity.

*Court.* This indictment is founded on a statute which you will be pleased to read to the jury.

Attorney General here reads the act as follows :

Sec. II. *And be it further enacted,* That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the congress of the United States, or the president of the United States, with intent to defame the said government, or either house of the said congress, or the said president, or to bring them or either of them, into contempt or disrepute ; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the president of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act ; or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

Sec. III. *And be it further enacted and declared,* That if any person be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right

to determine the law and the fact, under the direction of the court, as in other cases.

*John Buyers, sworn. examined by Mr. Rawle.*

*Q.* Do you know this paper? (hands a paper to him)

*A.* Yes.

*Court.* Look at the back of it?

*Q.* Who brought that paper to you?

*A.* Thomas Cooper.

*Q.* At what time?

*A.* The evening of the sixth of December, 1799.

*Court.* Where?

*A.* At my house at Sunbury. He came to me at the door of my house. Asked me to walk in. We walked in. This was between candle-light and day light. He asked for a candle. He perused this paper, which I have in my hand, pointed to his name, and said, this is my name, and I am the author of this piece.

There was nothing further passed, only he said, this may save you trouble another time. I knew very well what he meant by it.

*Q.* Did you give intimation of this to any one?

*A.* I gave it to Mr. Rawle's Deputy, who prosecutes for the United States.

*Cross-examined by Mr. Cooper.*

*Q.* Had not you and I been in the habit of frequently joking each other upon political subjects?

*A.* O yes—very often.

The Attorney general here read that part of the publication which is included in the indictment, for which reason it is omitted here.

#### MR. COOPER'S DEFENCE:

*Gentlemen of the Jury,*

If it were true, as it is not true, that in the language of the attorney general of the district, I have been guilty of publishing with the basest motives a foul and infamous libel on the character of the President; of exciting against him the hatred and contempt of the people of this country, by gross and malicious falsehoods—then indeed would it be his duty to bring me before this Tribunal, it would be yours to convict, and the duty of the court to punish me. But I hope in the course of this trial, I shall be enabled to prove to your satisfaction, that I have published nothing which truth will not justify. That the assertions for which I am indicted are free from malicious imputation: and that my motives have been honest and fair.

You will observe, *Gentlemen of the Jury*, that the law requires it to be proved as a necessary part of the charge, that the passages for which I am indicted should be false and scandalous, and published from malicious motives: and before you will be able, consistently with your oaths, to convict upon this indictment, you must be thoroughly satisfied that both these parts of the charge are well founded. Nor does it appear to me that the

expression of the act, to bring the President into contempt, can be fulfilled if the accusation, as in the present instance, related to an examination of his *public* conduct, and no improper motives are imputed to him. And that I have carefully avoided imputing any impropriety of intention to the President even in the very paper complained of—that the uniform tenor of my conduct and language has been to attribute honesty of motive even where I have strongly disapproved of the tendency of his measures, I can abundantly shew.

*Gentlemen of the Jury*, you, and all who hear me, well know that this country is divided, and almost equally divided, into two grand parties; usually termed, whether properly or improperly, *Federalists* and *Anti-Federalists*: and that the governing powers of the country, are ranked in public opinion under the former denomination—of these divisions, the one wishes to increase, the other to diminish the powers of the Executive; the one thinks that the people, (the Democracy of the country) has too much, the other, too little influence on the measures of government: the one is friendly, the other hostile, to a standing army and a permanent Navy: the one thinks them necessary to repel invasions and aggressions from without, and commotions within; the other, that a well organized Militia is a sufficient safeguard for all that an army could protect, and that a navy is more dangerous and expensive than any benefit derived from it can compensate: the one, thinks the liberties of our country endangered by the licentiousness, the other, by the restrictions on the Press: Such are some among the leading features of these notorious divisions of political party. It is evident, Gentlemen of the Jury, that each will view with a jealous eye the positions of the other, and that there cannot but be a bias among the partizans of the one side, against the principles and doctrines inculcated by the other. In the present instance I fear it cannot but have its effect: For without impeaching the integrity of any person directly concerned in the progress of the present trial, I may fairly state, that under the Sedition Law, a defendant, such as I stand before you, is placed in a situation unknown in any other case.

Directly or indirectly, the public, if not the private character of the President of the United States is involved in the present trial. Who nominates the judges who are to preside? the juries who are to judge of the evidence? the Marshal who has the summoning of the jury? the President. Suppose a case of arbitration concerning the property of any one of you, where the adverse party should claim the right of nominating the persons whose legal opinions are to decide the law of the question, and of the very man who shall have the appointment of the arbitrators? what would you say to such a trial? and yet in fact such is mine, and such is the trial of every man who has the misfortune to be indicted under this law. But although I have a right to presume something of political bias against my opinions, from the court who try me, to you who sit there as *jurymen*, I am still satisfied you will feel, that you have some some character to support and some character to lose; and whatever your opinions may be on the subjects alluded to in the indictment, you will reverence as you ought the sacred obligation of the oath you have taken.

*Gentlemen of the Jury*, I acknowlege as freely as any of you can, the necessity of a certain degree of confidence in the executive Government of the

Country. But this confidence ought not to be unlimitted, and need not be paid up in advance ; let it be earned before it be repos'd ; let it be claimed by the evidence of benefits conferred, of measures that compell approbation, of conduct irreproachable.—It cannot be exacted by the guarded provisions of Sedition Laws, by attacks on the Freedom of the Press, by prosecutions, pains, and penalties on those which boldly express the truth, or who may honestly and innocently err in their political sentiments.—Let this required confidence be the meed of desert, and the public will not be backward to pay it.

But in the present state of affairs, the Press is open to those who will praise, while the threats of the Law hang over those who blame the conduct of the men in power.—Indiscriminate approbation of the measures of the executive, is not only unattacked, but fostered and received with the utmost avidity.—While those who venture to express a sentiment of opposition must do it in fear and trembling, and run the hazard of being dragged like myself before the frowning tribunal, erected by the Sedition Law.—Be it so ; but surely this anxiety to protect public character, must arise from fear of attack.—That conduct which will not bear investigation will naturally shun it ; and whether my opinions are right or wrong as they are stated in the charge; I cannot help thinking they would have been better confuted by evidence and argument than by indictment.—Fines and imprisonment, will produce conviction neither in the mind of the sufferer, nor of the public.

Nor do I see how the people can exercise on rational grounds their elective franchise, if perfect freedom of discussion of public characters be not allowed.—Electors are bound in conscience to reflect and decide who best deserves their suffrages ; but how can they do it, if these prosecutions in *terrore nr* close all the avenues of information, and throw a veil over the grossest misconduct of our periodical rulers.

Gentlemen of the Jury,

After having offered these preliminary remarks, I shall give an account of the paper on which I am accused, and then proceed to examine the charges of the indictment in the order in which they are laid : much that I intended to have advanced I must relinquish, that I may not trespass too long on your time, or weaken the effect of my own defence by fatiguing your attention.

The scored paper now handed to me by the attorney-general, suggests an observation, which, though trite, is material. Upon the plan usually adopted in these *ex officio* accusations, a good Christian might easily be proved an arrant atheist. “The fool hath said in his heart there is no God.” Take the four last words and they are atheistical : take the sentence and it is scripture. So, take the marked passages in this paper and they may perhaps be forced into something like improper imputation against the president : take the paper itself, and the very first paragraph is a plain and positive approbation of his intention. Though I must acknowledge, that however upright I might formerly have believed his motives of action, I cannot upon reflection, pay that tribute to his conduct or his motives on the present occasion.

The general circumstances that gave rise to the paper I now hold are

these : Dr. Priestley, a man whose name implies a greater combination of learning, science, and ability, of important discovery, of exertion for the benefit of mankind, and of private integrity, than any other man now living can boast—whose conduct towards me in the instance detailed in this paper is praise sufficient to bear up my mind against any consequences which the present trial can produce—had long been an acquaintance and an intimate acquaintance of Mr. Adams in England and in this country. The letters of the latter to dr. Priestley are full of strong expressions of friendship and esteem. Relying upon this long intercourse of cordiality between them, dr. Priestley urged me to permit him to write to Mr. Adams on the subject of a vacancy mentioned in this paper, and which as you will have it before you when you retire, I shall not read at length. This application was from one friend to another ; upon the face of it a confidential communication ; although containing nothing but what might do credit to all the parties concerned. Mr. Adams, however, did not think it so confidential ; and from some disclosure on his part has been founded the base and cowardly slander which dragged me in the first instance before the public in vindication of my moral and political character, and has at length dragged me before this tribunal, to protect, if I can, my personal liberty and my private fortune against the legal attack of an *ex officio* information. Hence it is evident, gentlemen of the jury, that this is not a voluntary, but an involuntary publication on my part : it has originated not from motives of turbulence and malice, but from self-defence ; not from a desire of attacking the character of the president, but of vindicating my own. And in what way have I done this ? My motives, my private character, my public character, were the object of falsehood and calumny, apparently founded on information of high authority. In reply, I give credit to the intentions of the president, I say nothing of his private character, and I attack only the tendency of measures notorious to the world, which having been known to disapprove publicly, I was charged with being ready from motives of interest, to approve privately. I think, gentlemen, you cannot help feeling this contrast of behaviour, and if the president is satisfied with his side of the picture I am with mine.

The FIRST article selected for accusation is, that at the time I allude to, *he was but in the infancy of political mistake*. Why this expression should have been fixed on as seditious I know not, unless it be that *quem deus vult perdere prius dementat* ; for have we advanced so far on the road to despotism in this republican country, that we dare not say our President may be mistaken ? Is a plain citizen encircled at once by the mysterious attribute of political infallibility the instant he mounts the presidential chair ? If so, then indeed may it be seditious to say he is mistaken ; but before you can condemn me for this kind of sedition you must become catholic believers in this new-fangled doctrine of infallibility. I know that in England the king can do no wrong, but I did not know till now that the President of the United States had the same attribute.

I have said (and I am accused for saying it) “*that even those who doubted his capacity thought well of his intentions.*” Is it a crime to doubt the capacity of the President ? Suppose I had said that there were some who did not give him credit for capacity sufficient for the office he holds, is that a crime ? Or if in them, is it a crime in me, who have not said it ? Nor can

the word *capacity* here be fairly construed into any other than a comparative meaning; for surely no one who has read his Defence, as it is called, of the American Constitution, or who reflects that he has had abilities enough to raise himself to his present situation, can say that he is devoid either of industry or talents. But those who voted for his opponent must have believed Mr. Adams of inferior capacity to that gentleman. Of that number was I; of that number was at least one-half of the people of the United States. If it be a crime thus to have thought and thus to have spoken, I fear I shall continue in this respect incorrigible. But if of two constructions the one is absurd, improbable and unfavorable, surely it should be rejected in favour of that meaning which was most likely to have occurred, and which in its effects will do least injury to a defendant like myself. This is common, this is legal charity.

*Nor had we yet under his auspices, been saddled with the expence of a permanent navy.*

Gentlemen is it true or not that we are saddled with the expence of a permanent navy? Is it necessary that I should enter into a detail of authorities to prove that the sun shines at noon day? But farther, is it true that we incur this expence under his auspices and sanction?

I have before me two publications, the one the Gazette of the United States, published by Mr. Fenno in this city; and another in a form more portable and convenient, purporting to be a selection of addresses and answers to and from the President during the summer of 1798. Not having been able to procure office copies of the documents I wished to refer to, I must offer in evidence such publications as I can find; that class of publications, upon which in fact the mind of the public is usually made up; and upon whose authority the electors of this country determine the characters whom they honour with their suffrage. Indeed if the opinion that fell from the court this morning be accurate, that no man should hazard an assertion but upon sufficient and legal evidence, and if documents from the public offices in proof of notorious facts are required as such evidence, then are the mouths of the people compleatly shut up on every question of public conduct or public character: but I cannot help thinking it a fair and reasonable position, that a defendant in such a case as this should be permitted to offer to the jury any evidence that appears to him a sufficient ground for his assertion, and let them decide on its credibility.

Judge Chace. What is it that you say sir fell from the court? They have not yet decided what was or what not proper evidence for you to adduce. The court said if you thought the public documents at your service you were mistaken. If you undertake to publish without having proper evidence before you to justify your assertions, you do it at your own risk. Most assuredly in common traverses you could not offer the evidence you mention. But we acknowledge that in such a case as this greater latitude may be given. If you say the president did write a letter you must prove it. We should incline to admit gazettes and acts of public authority and notoriety: you might read the speech of the President to both houses of congress in evidence. If you want to prove that the President advocated a navy, you may read the journals of congress or any authentic public document.

Mr. Cooper. If I am defeated in my endeavors to procure these docu-

ments, I must offer such evidence as I can procure ; and where there is no reasonable suspicion or assignable motive why the publications I offer should misrepresent the transactions I allude to, the probability is in favour of their accuracy ; especially when the printers of them are severely punishable for wilful misrepresentation or gross mistake in detailing the public acts of government.

*Judge Peters.* I admit a great many things from Mr. Cooper who is without counsel, which I would not admit from others.

*Judge Chase.* You may read any thing and every thing you please.

*Mr. Cooper.* Then read the following extracts : Answer of the president to the address of the Boston Marine Society. (Patriotic addresses printed for John and W. Folsom, at Boston, 1798) p. 93. " Floating batteries and wooden walls have been my favourite system of warfare and defence for this country for TWENTY-THREE years. I have had very little success in making proselytes. At the present moment however, Americans in general, cultivators as well as merchants and mariners, begin to look to that source of security and protection, and your assistance will have great influence and effect in extending the opinion in theory, and introducing and establishing the practice."

To the same purpose is the answer of the President to the young men of Boston. " To arms then my young friends, to arms : especially by sea, to be used as the law shall direct let us resort ; for safety against dangers which we now see cannot be averted by truth, reason or justice." Pat. add. p. 38.

In unison with these opinions of the President the Secretary of the Navy, Mr. Stoddart, presented a report to congress early the next session (2d Jan. 1799) recommending (p. 1) a navy of 12 seventy-fours, as many frigates, and twenty or thirty smaller vessels : in another part (p. 2 and 16) he recommended an addition of 12 seventy-fours to the existing establishment.— Some of the reasons given by Mr. Stoddart deserve our most serious attention.\* Surely after these statements it will not be denied that our navy is established under the sanction, not to say express recommendation of the President.

In the passage thus indicted, there is no expression of blame against the measure, nor any imputation of improper motive or conduct to the President on account of it ; but I scorn this subterfuge of construction : I did mean when I wrote it to imply a disapprobation of the measure : I thought it objectionable at the time ; I think so still. I have elsewhere† stated my reasons for this disapprobation, and why we are protecting our commerce

\* The passages I allude to are these. Rep. p. 2. " Whether this security can be afforded unless we are able to command our own coast ; and whether the union of all the states can long be preserved without it, are questions that merit the most serious and attentive consideration of American legislators. I forbear to dwell on this fruitful, perhaps delicate topic.

† P. 3. Thus then, whether our object be to prevent invasion—to protect our commerce—to obtain a speedy and proper peace—to maintain peace hereafter—or by affording security to every part of our country, to guard against the long train of ills which must result from disunion," &c.

† Political arithmetic, published by Campbell, Philadelphia.

at double its worth : I shall not therefore detail my reasons for this opinion, but appeal to you, gentlemen of the jury, if I have the misfortune of differing in opinion with the President on this subject, as wiser heads have done before me, whether I ought to be indicted and punished for this disagreement. Our opinions are not in our own power ; they are the inevitable result of such evidence and argument as we happen to light upon : at all events, let me ask, have I proved the facts as stated or not ? If I have, you cannot find me guilty consistently with the law that has been read to you, or the oaths you have taken.

It is farther imputed to me as a crime, that I have said, *under the auspices of the President we are threatened with the existence of a standing army.*

I feel it very difficult to prove facts so notorious as those I am charged with asserting. Gentlemen of the jury, have we or have we not a standing army ? Is it or is it not sanctioned with the approbation of the President ? Independent of his official approbation giving to our military establishment, he has certainly expressed himself voluntarily much in favour of the measure. Is his reply to the address of the young men of Boston, pat. add. p. 37, he says, that " this country never appeared to him to be in greater danger than at that moment from within or without—never more urgently excited to assume the functions of soldiers." And to the students of Dickinson College, pat. add. 240, he hopes, that none but those who feel a natural genius and disposition to martial exercise " and exertions will ever be called from the field of science," &c. These are certainly evidences of his approbation of a military force distinct from the militia ; evidences confirmed by the repeated official statements and reports\* of the present executive department on the same subject. Without his approbation we could not have had a standing army, and to the inhabitants of our towns and villages who have eyes and ears, no farther proof than the use of them is necessary that we have one.

This measure, like the former, I certainly meant to inculpate ; and if I most sincerely disapprove it, I shall not hold an opinion unconfirmed by ancient or modern history, or by testimonies of weight among the dead and the living, whose authority Mr. Adams himself will not disallow. Is it necessary for me, gentlemen of the jury, to enumerate the many governments in ancient and modern history called republics, which a standing military force has overthrown, and converted into despotisms ?† No man can have

\* The report of Colonel M<sup>c</sup>Henry to the President, of December 24, 1798, and by him recommended to the consideration of congress, contemplates an army of 50,000 men, to put us on safe ground. I shall extract from the report of Colonel M<sup>c</sup>Henry of 5th January to the President and the 13th of February, 1800 to congress, hereafter.

† Timotheus overthrew the liberties of Corinth ; Agathocles of Syracuse ; Pisistratus of Athens, Marius and Sylla, with their contending armies deluged Rome in blood. Cæsar by his army compleated the destruction of its government. Under the emperors the prætorian guards became the disposers of the empire--- Let the reader consider the instances of Gustavus Eriksen in Sweden, of Francis Sforza in Milan ; of Oliver Cromwell and gen. Monk in England, and the recent conduct of Buonaparte in France, and deny if he can the natural hostility between an army and liberty.

read history without remarking it, or perused any of the modern discussions on this subject † without finding them enumerated. Are we ourselves unacquainted with the inconveniences attending them, or are the particular objections to a standing army in such a country as ours so deep-and difficult as to require diffuse illustration ? I think not ; I think I may safely venture to trust to your recollection of recent events in support of the disapprobation, I certainly meant to cast on a standing army in any form, or to any extent, or on any pretence, except perhaps the dubious necessity of actual invasion.

General Washington, whose opinions every man who hears me will listen to with respectful attention, was a decided enemy of these kind of military establishments. In his speech to both houses of congress, December 1793, he apologizes thus for having recommended certain measures of a military nature: " Nor can such arrangements with such objects be exposed to the censure or the jealousy of the warmest friends of republican government. They are incapable of abuse in the hands of a MILITIA, who ought to possess a pride in being the depository of the force of the republic, and may be trained to a degree of energy equal to every military emergency of the United States." Again—In that last and most deliberate act of his most useful life, his *farewell address* to his countrymen, he expresses himself thus—" Hence likewise they will avoid the necessity of those overgrown military establishments which under any form of government are *inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty.*" Such are the sentiments of general Washington toward the close of a public life that gave him peculiar opportunities of judging on this subject.\* Nor has Mr. Adams himself been at all times so favourable as he seems to be at present to the modern system of standing armies. " We have seen," says he, (alluding to England) " one of the first nations in Europe, possessed of ample and fertile territories at home, and extensive dominions abroad, of a commerce with the whole world, immense wealth, and the greatest naval power which ever belonged to any nation, who have still preserved the power of the people by the equilibrium we have been contending for, by the trial by jury, and by constantly refusing a standing army. The people of England alone, by preserving their share in the legislature, at the expence of the blood of heroes and patriots, have enabled their kings to curb the nobility without giving him a standing army."†

I Gordon and Trenchard's tracts in particular, to which I may venture to add my own continuation in Cooper's reply to Mr. Burke's invective.

\* See appendix, No. 2.

† Mr. Adams is certainly more accurate in his theory than his facts. It is surprising to me that any man can have read the history of England, particularly the quarrels between the monarchs of that country and the house of commons, from William the Third, to George the Third; the various protests of the minorities in the house of lords on the subject of standing armies; the observation in Cato's Letters, and the Tracts of Gordon and Trenchard, and yet assert that there was no standing army in England at the time the above passage was written. Did not Mr. Adams know that the soldiery in England are enlisted for life, although the mutiny bill is annual, and the appropriations annual?

Hence then we see that whatever the President may be now, the time has been when he was not an advocate for a standing army ; if the President has thought fit to change his opinion, still I hope it is no crime in me, to have retained mine. The next charge, is that which respects the projected Embassies to Prussia, Russia and the Sublime Porte. Mr. Pickering who is on the bench with the court, can prove the persons appointed, the date of their appointment, and their salaries. But this will be to occupy time in proving a matter of notoriety, and I feel now disinclined to enter into all the details of conclusion which the facts he could tell us would lead me to. I have much yet to go through ; I feel the effect of interruption, and therefore without resorting to his testimony, I shall observe very briefly in the first place, that the obvious tendency of these appointments, beside providing for those who are nominated to them, is to put us in a way of being drawn into the vortex of European politics and European quarrels, with which we have nothing to do : 2dly. That they are commercially useless ; the commerce of this country to those places does not furnish profit enough to pay the expences of our diplomatic and consular establishments there. 3dly. That they have hitherto produced no national benefit whatever, so far as the public yet know ; and 4thly. I am, as a citizen of this country, a sincere convert to the doctrine of General Washington in his *farewell address*. Hear his words : " The first rule of conduct for us in regard to foreign nations, is in extending our commercial relations to have with them as little political connexion as possible ; so far as we have formed engagements, let them be fulfilled with perfect good faith : here let us stop. Europe has a set of primary interests, which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence therefore it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, or in the ordinary combinations and collisions of her friendships or enmities," again : " why forego the advantages of so peculiar a situation ? why quit our own stand upon foreign ground ? why by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humour or caprice. 'Tis our true policy to steer clear of all permanent alliances with any portion of the foreign world : so far, I mean, as we are now at liberty to do it ; for let me not be understood as capable of patronizing infidelity to existing engagements. But in my opinion it would be unwise to extend them."

Here then, Gentlemen of the Jury, do I stand before you, indicted for being an advocate for the doctrines, solemnly and deliberately recommended to his fellow citizens, by GEORGE WASHINGTON.

But *we have borrowed money* says this paper of mine, at 8 per cent in time of peace.—Have we or have we not ? If we have, am I guilty of a crime in making the assertion ? or can you really deem it necessary that I should adduce proof to establish this fact ? But perhaps Mr. Attorney General may say, I meant to imply a censure on the President for his sanction to this measure : I did so.—I think the causes of the Loan, the measures that produced it, had a tendency unfavourable to the interest of the country : I have already urged what I had to say on our permanent navy, and our standing army, and therefore I shall not repeat the objections.—I think

the loan was extravagant, for in no period of war do I recollect that Great Britain has ever offered this high interest. I think the interest thus given improper, as a sanctioning of usury by Government, while our laws repress it individually, I dread the principles of all Loans; for I abhor a funding system and a national debt.—If thus to think be a crime, I must patiently abide the punishment.—Nor do I see why this expence should have been made necessary by any previous measures, while the state of our finances was so unfriendly to any expenditure that could have been avoided.—If Mr. Gallatin's book on the finances of this country, be not authority, it ought to be.—In page 48 and the subsequent pages of that book, you may find that about the time when General Washington declined and Mr. Adams accepted the Presidency, our receipt and expenditures about balanced each other; they were in round numbers  $6\frac{1}{2}$  million of dollars per annum. I hold now in my hand the report of the committee of ways and means of February 21st. 1800, published by order of the house of Representatives of Congress, from page 15 whereof it appears that the estimated revenue for the year 1800, is only 9,301,258 dollars, while the estimated expence is 15,393,034, leaving a deficiency of above 6 million of dollars! As the example of borrowing at 8 per cent is now set; time only can shew us how much of this alarming deficiency is to be made up by such loans, at this enormous interest. If this be the price of borrowing in time of peace what will be the interest demanded in a period of war! Is this giving a proof of our strength, or of our weakness?

*This money was borrowed when the violence of official expressions might have provoked a war.*

Gentlemen of the Jury, the court will concede that Vattel's Treatise on the Law of Nations, is a book of acknowledged authority: and from that book I will read a quotation or two. "Nothing is more opposite to the duties of humanity nor more contrary to the society which should be cultivated by nations, than offences or actions which give a just displeasure to others. Every Nation therefore should carefully avoid giving any real offence: I say a real; for should he who manifests a displeasure at our behaviour when we are only using our rights or fulfilling our duties, he is to blame, not we. Offences excite such asperity and rancour between nations, that we should avoid giving room even for ill grounded offences, when it can be done without any inconveniency or failure in our duty. It is said that some medals and dull jests, were what irritated Lewis XIV against the United Provinces, and were the chief cause of his expedition in 1672, by which that Republic was brought to the brink of ruin." L. 2. Ch. 1. § 19.

Again, L. 3. Ch. 4. § 65. "In so civilized an age, it may be unnecessary to observe, that in these pieces, published on account of a war, all opprobrious words are to be avoided, together with every expression indicating hatred, animosity, and rage, as these can only excite the like sentiments in the enemy. A prince, both in his discourses and in his writings, ought to observe the most noble decency. He is to respect himself in the person of his equals: and though it is his misfortune to be at variance with a nation, shall he inflame the quarrel by offensive expressions, and thus deprive himself of the hopes of a sincere reconciliation? Homer's heroes called each other dog and drunkard, and in their

" wars they observe no manner of décorum, they were filled with the most  
 " brutal outrages. Frederick Barbarossa with other Emperors, and the  
 " Popes their enemies, treated each other with the same roughness and  
 " violence. Let us congratulate our age on the superior gentleness of its  
 " manners, and not deny us an empty politeness, customs which have  
 " consequences truly beneficial."

Thus far Vattel ; and I most sincerely wish it were in my power to congratulate my fellow citizens of America, and the administration of our country, with having uniformly preserved that tone of superior gentleness, and beneficial politeness, so wisely recommended by our author.

But I have no such congratulations to make ; and it is to me a very unpleasant task to detail, though in my own defence, those official expressions on the part of the President, which have given undoubted cause (and in my opinion just cause) of offence to France. I shall pass by the abberations from decorum of language which I might quote from the documents of secondary officers, and confine myself however unpleasantly, to those which the President himself has thought fit to furnish or to sanction. I have many of them to adduce ; but I feel fatigue ; and it is a task too irksome to wade through the whole collection.

*Gentlemen of the Jury*, these are expressions respecting the characters and conduct of the French rulers, and of the French nation, that I am about to quote. I know that reflections have been thrown upon many persons in this country, especially if they are not natives, as too much addicted to French politics. I hope it will not be improper to obviate that stigma in my own case : nor do I know how to do it but by quoting a passage published by myself, when this imputation and this trial could not have been in contemplation.

*Mr. Rawle*. Does the court conceive this can be evidence ?

*Judge Chase*. Surely not : bat let Mr. Cooper read what he pleases.

*Mr. Cooper*. By no means : I shall not deliberately avail myself of what is not evidence, and perhaps this is not strictly so.

But, *Gentlemen of the Jury*, in a cause like this, so completely political, I know the bias that may arise from these collateral suspicions and party imputations ; and I wish if I can, to meet and to refute them as they arise. In the present instance, if they are entertained by you, they will be ill founded and unjust. I am American enough to feel that both the belligerent powers have furnished us with a just cause for war, if common prudence had not forbidden our resorting to it. (To Mr. Rawle) All my extracts contain references to Feno's Gazette, but as the selection of addresses is more handy than the files on the table, I will use it till you wish to see the Paper itself respecting any of my quotations.

In the President's answer to the address of the inhabitants of the town of Arlington and Sandgate in Bennington county Vermont (Pat. ad. p 11, Feno July 2, 1798) he says, " I have seen in the conduct of the French nation for the last 12 years, \* a repetition of their character displayed under

\* In the President's inaugural speech of March 4, 1797, he says " if a personal esteem for the French nation formed in a residence of seven years chiefly among, and a sincere desire to preserve the friendship which has been so much for the honour and interest of both nations, &c."

" Louis the 14th. and little more, excepting the extravagancies which have been intermixed with it of the wildest philosophy that was ever professed in this world since the building of Babel and the Fables of the Giants who by piling mountains on mountains invaded the skies. If the spell is broken, let human nature exult and rejoice."

In the address of the Mayor, Aldermen &c. of the city of Vergennes in Addison county Vermont, patr. ad. 14. Feno July 12, 1798, there is the following passage: " The *perfidious* republic which boasts of its terror and prowes to us is more terrible in vice and impieties than in arms."

In his answer the President replies " your opposition to that policy, if indeed it can be called policy, which is equally destructive of persons things and nations, does honour to your understanding and dispositions."

In page 35 of the Pat. ad. the same kind of language is used in an address from the young men of Boston, wherein they say " at a period when a powerful and *perfidious* nation aspiring to the dominion of the world, annuls in the career of her pride all bonds of national amity.

In the address from Concord in Massachusets pat. ad. 49. " they cordially acquiece in the vigorous measures adopted by our executive towards an aspiring power, who unprovoked, encouraged the piracy and perfidy of Gothic darkness and Vandal barbarity ; who has perpetrated crimes unparalleled in the history of man ! France grasping at universal dominion has abandoned every moral and religious principle, trampled on sacred faith, sported with national laws, and demanded pecuniary exactions which bankrupt our nation and make us slaves instead of a free and independent people."

*Mr. Rawle.* I do not want to interrupt Mr. Cooper, but (I presume from inadvertence) he has read the addresses to the President as if they were the answers of the President. I do not think he wishes to mislead, but this is improper, I do not find that the answer to the address of the young men of Boston \* contains the passage he has quoted.

*Judge Chase.* I wish Mr. Cooper to do and say whatever he chooses ; go on Sir.

*Mr. Cooper.* If I have committed a mistake I am very sorry for it, but I have committed none : where this language is permitted or encouraged—where the answers re-echo or approve the addresses, that approbation amounts to an adoption by the President. For instance, in the answer to the last address I read, the President begins " Gentlemen, I thank you for this address, Your encomiums on the executive authority of the government is in a high degree flattering." Sir, I have a right to contend that this retort complimentary, on the part of the President, is a direct approbation of the language of the address. I need not however refer to the addresses at all, for I have enough among the answers in the twenty other instances I have selected, compleatly to establish my position ; not that a few cases of harsh and intemperate language, have inadvertently escaped through warmth of temper and a sense of national provocation, but that they have been systematically, perseveringly, indulged in.

But I begin to grow weary of this cause ; and I feel disinclined to fatigue

\* Lord Kenyon has decided 5 Term Rep. 442, that both addresses and answers are matters of State.

myself and you still more by wading through this collection of unpleasant and irritating expression: nor do I think it worth while to employ my time and yours in contending every technical objection. I did not fully expect such frequent interruptions, on a trial of this nature, or to have fought my way, *per tot ambages, per tot discrimina rerum.* I shall quit therefore the paper of extracts † I hold in my hand, and quote no more of them. But these addresses and answers are not the only foundations of the assertions I made. The French themselves have complained of this violent language and unjust accusation of their principles and conduct. They have felt the indignity, and have expressly made it *an obstacle to negotiation.* In page 19 of the instructions to the Envoys, &c. published by the Secretary of State, in conformity to the resolution of Congress of June 22, 1798, those Envoys inform us that " M. Y. took out of his pocket a French translation of the " President's speech, the parts of which objected to by the Directory, were " marked agreeably to our request to M. X. and are contained in the " exhibit A," (this exhibit I need not read at length: it will be found in p. 24 of the book I am quoting.) " Then he made us the second set of pro-positions, which were dictated by him and written by M. X. in our presence, and delivered to us, and which translated from the French are as follows: There is demanded a formal disavowal in writing, declaring that the speech of the Citizen President Barras did not contain any thing offensive to the government of the United States, nor any thing which deserved the epithets contained in the whole paragraph."

In another part of the same page the envoys tell us M. Y. informed them that " the directory were extremely irritated on account of some parts of the President's speech." Now, gentlemen of the jury, that speech is mildness itself compared with the extracts I have read, and was prepared to read to you from the addresses and answers of the President, published in the same month with this very book.

In page 92 the Envoys give us a translation of the letter of M. Talleyrand, the minister of foreign relations, to them. In p. 97 there is the following paragraph of that letter. " The newspapers § known to be under the indirect controul of the cabinet, have, since the treaty, redoubled the invectives and calumnies against the republic and against her principles, her magistrates and her envoys. Pamphlets openly paid for by the minister of Great Britain, have re-produced in every form those insults and calumnies, without a state of things so scandalous ever having attracted the attention of the government which might have repressed it. On the contrary the government itself was intent upon encouraging this scandal in its public acts. The executive directory has seen itself denounced in a speech delivered by the President in the course of the month of May last (O. S.) as endeavouring to propagate anarchy and division within the United States. The new allies which the republic has acquired, and who are the same that contributed to the independence of Americans have been equally insulted in the official correspondencies that have been made public, or in the newspapers. In fine, one cannot help discovering in the tone of the speech and of the publications which have just

† *Vide Appendix no. 3*

§ *See Appendix No. 4.*

" been pointed out, a latent enmity which only waits an opportunity to break out."

Gentlemen of the jury, after the serious manner in which the tone of official expressions had been noticed by the French nation—after it was made an avowed obstacle to negociation—where was the prudence or propriety of a persevering reiteration of language such as I have read to you? For my own part, I cannot help thinking such conduct in a public character rash and indecorous, and highly deserving the reprehension I have expressed.

The next and last point, that which seems to be the most serious of all, is, *the interference of the President in the decision of a court of justice in the case of Jonathan Robbins.*

This case has received such full and such recent discussion; it has been so much talked of in congress, and written of out of congress, that I do not think it necessary to enter into all the details of evidence and argument which would have been necessary could I have presumed you unacquainted with the subject. I shall, however, prove to you, gentlemen of the jury, that there has been such an interference on the part of the President, that it was not only without, but against precedent and against law; and if so, you will also conclude with me that it was against mercy. Here is the message of the President to congress on the case of Jonathan Robbins, authenticating the communications of Mr. Pickering. In page 5<sup>\*</sup> Mr. Pickering states, that he had communicated Mr. Liston's application to the President, and that Nash (Robbins) is charged, as it is understood, with piracy and murder, committed on board a British frigate on the high seas; the

\* Philadelphia, June 3d, 1799.

Sir,

Mr. Liston, the minister of his Britannic majesty, has requested, that Thomas Nash, who was a seaman on board the British frigate Hermione, and who he is informed is now a prisoner in the jail of Charleston, should be delivered up. I have stated the matter to the President of the United States. He considers an offence committed on board a public ship of war, on the high seas, to have been committed within the jurisdiction of the nation to whom the ship belongs. Nash, is charged, it is understood, with piracy and murder, committed by him on board the above-mentioned British frigate, on the high seas, and consequently "within the jurisdiction" of his Britannic majesty; and therefore, by the 27th article of the treaty of amity with Great-Britain, Nash ought to be delivered up, as requested by the British minister, provided such evidence of his criminality be produced, as by the laws of the United States, or of South-Carolina, would justify his apprehension and commitment for trial, if the offence had been committed within the jurisdiction of the United States. The President has in consequence hereof authorized me to communicate to you "his advice and request" that Thomas Nash, may be delivered up to the consul or other agent of Great-Britain, who shall appear to receive him.

I have the honor to be, &c. &c.

(Signed)

TIMOTHY PICKERING.

The honorable Thomas Bee, esq. }  
Judge of the district of South- }  
Carolina.

President gives his opinion on the subject of jurisdiction, and on the construction of the clause of the treaty ; and authorizes Mr. Pickering to communicate the President's ADVICE and REQUEST that Nash should be delivered up. Now, gentlemen, without entering into any argument on the question of territorial jurisdiction; or the construction of the clause of the treaty—without going into the point that the crime of piracy gave jurisdiction to the court here—I rest my assertion that the President interfered improperly *on this*; that if he had authority to do what he did, he would not have *advised and requested*, but REQUIRED AND DIRECTED: an advice may be rejected; a request may be refused, without attaching blame to the person who by this language is permitted to exercise his own judgment and inclination. Either the President had authority to interfere or he had not; if he had authority, the language should have been peremptory and not subject to excuse or evasion. If he *had not authority he should not have interfered at all.* But it is as evident as language can make it, that the President doubted of his own jurisdiction; advice and request is the expression of hesitation and distrust; he felt the impropriety of his conduct at the time, and his language bears the impression of his feelings.

I might have made enquiry by testimony into the circumstances attending the trial of the sailors from the Hermione before his honour Judge Chase, in New-Jersey. In those cases we hear of no such interference, though I have understood they were precisely similar to that under discussion: but I really feel myself too much exhausted to go into any verbal testimony on this head of the charge, though I had much to examine.

*Court.* Then if you do not mean to examine witnesses, the gentlemen who attend on this occasion need not be detained.

*Mr. Cooper.* Certainly not now: I must relinquish my intentions, for I shall not be able to go through with them.

*Court.* Sir, the court do not want to press you; they will wait for an hour if you wish it to give you time to recruit your strength.

*Mr. Cooper.* I am much obliged to the court, and to the gentlemen who have attended; but I shall proceed and finish as soon as I can.

I have said this was an interference that the monarch of Great-Britain would have shrunk from. Let the case be pointed out if it can, *when* a monarch of Great-Britain has made such an attempt. I know of none; and I know also enough of the law and of the spirit of that country, to be satisfied, that no such attempt would be ventured on there.

It is without precedent—I say further, it is against precedent. I held in my hands the case of the United States vs. judge Lawrence (p. 42 of 3 Dall. Rep.) The substance of that case is this: Capt. Barré of the French vessel le Perdrix, abandoned his ship, became resident at New York, was claimed as a deserter by the Consul of the French Republic, and required to be delivered up under the 9th art. of the consular convention between the United States and France, which authorizes the mutual delivery of deserters to the consuls or vice consuls of the respective Countries, on demand made in writing to the Courts, Judges, and officers competent; and on proof by the exhibition of the Ship's Roll, that the persons required were part of the Crews. The French consul could not produce the original register or role d'équipage, but a copy only: this, Judge Lawrence thought insufficient evidence under the clause of the Convention. The Minister of the French

Republic then applied to the executive, complaining of the refusal, and "the present motion was made in order to obtain the opinion of the Supreme Court (of the U. S.) upon the subject for the satisfaction of the Minister. After counsel were heard in opposition to the motion" the Attorney General (Bradford) in reply premised that the Executive of the U. S. had "no inclination to press upon the Court any particular construction of the article on which his motion was founded, but as it was the wish of our Government to preserve the purest faith with all nations, the President could not avoid paying the highest respects and the promptest attention to the representation of the Minister of France, who conceived that the decision of the district Judge involved an infraction of the conventional rights of his republic, \*\*\*\*\* In the present case from the nature of the subject as well as from the spirit of our political constitution, the Judiciary department is called on to decide. For it is essential to the independence of that department, that judicial mistakes should only be corrected by judicial authority. The President therefore introduces the question for the consideration of the Court, in order to insure a punctual execution of the Laws, and at the same time to manifest to the world the solicitude of our Government to preserve its faith and to cultivate the friendship and respect of foreign nations.

Here then in both cases, (the constitutional powers of Gen. Washington and Mr. Adams being the same) a foreign Consul claims a Man to be delivered up under a Clause of a treaty. The claim in both cases is made to a district Judge: in both cases the foreign Minister afterwards applies for the same purpose to the President of the U. S. and at this point, the Similitude ends. For Gen. Washington did not hazard an opinion of his own or exert executive influence in favour of the application from the french minister, but introduced the question for the consideration of the Court—Mr. Adams did hazard his own opinion in favour of Mr. Liston's application, and advised and requested Judge Bee to conform to it. Gen. Washington "had no inclination to press upon the Court any particular construction of the clause in the Treaty" Mr. Adams not only inclined, but indulged his inclination in pressing upon Judge Bee that construction of the clause in the Treaty which was most favourable to the British claim. Gen. Washington deemed it "essential to the independence of the Judiciary Department, that judicial mistakes should be corrected by judicial authority"—Mr. Adams not so tender of judiciary honour and independence, boldly satisfied the scruples of Judge Bee by executive authority. Gen. Washington "from the nature of the subject, as well as from the Spirit of our political Constitution" left the judiciary department to decide the question—The nature of the subject and the spirit of our political Constitution, were no obstacles to Mr Adams; he decided the question himself without being restrained by the one consideration or the other. In the case of capt. Barré, Gen. Washington had a pretence for interfering, which Mr. Adams had not; for it was the application of the consul alone that gave jurisdiction to Judge Lawrence—whereas the charge of Piracy in the case of Robbins brought him compleatly within the jurisdiction of our Courts, even tho' it had been legally established that he was a native subject of the British monarch. Gen. Washington acted in a new case; he had no previous decision to guide his conduct; he can

counter to no precedent of authority, to no case in point; no charge of Piracy gave undeniable jurisdiction: even though his good sense had not prevented his interference with Judge Lawrence, the mistake might in him have been forgiven—But Mr. Adams had a precedent to go by; he had law to guide his conduct? the case in point was within the compass of his information; the example set by his predecessor,

Gentlemen of the jury, after these observations it will be for you to decide whether I have asserted too much in saying that Mr. Adams interfered without precedent and against law—might I not have been justified had I gone a little farther? If he did so, it was against mercy, for the man was hanged.

In this message of the President there are certificates from certain persons of the town of Danbury denying that any man or any family of the name of Robbins had been known for many years *within that town*. There are two or three singular circumstances attending these certificates.

*Mr. Rawle.* This is information subsequent to the libel.

*Judge Chase.* Is not the whole of the Message of the President subsequent to the publication charged in the indictment? If so, how can it be evidence? Sir, you had not this evidence before you when you wrote that paper.

*Mr. Cooper.* Sir, the point in question is, the *truth or falsehood* of the charge. I had evidence sufficient before me when I wrote it; sufficient to satisfy my own mind: what if I have still better evidence now? Is the fact the less true because the President confirms it? The facts had been published in almost every paper of the United States—they were detailed at length in a publication then before me, and now on the table, by a most respectable member of the Senate, Mr. Charles Pinckney; which I do not offer in evidence because I know it will be objected to. Besides this, I have already stated that these facts are and must be to the jury, matters of recent and public notoriety; they are so referred to by Mr. Pickering in his own report: they have been given in all the debates in Congress lately published, and even now daily publishing; and I have a right, as I think, to adduce this message, at least as *additional* and *corroborative* testimony. But the issue between us is, TRUE or NOT TRUE; the issue is not, had I the *best* evidence at the time I wrote or not. Whatever evidence I possessed at the time I wrote, it is enough for me at this time, to prove that what I wrote was and is true: and the message goes directly to this point.

Gentlemen of the Jury, I say there are two or three singular circumstances attending these certificates. They also, are far more liable to this objection than the evidence I have offered; for they have been pressed into the service, long after the publication of Robbins's affidavit that he was a native American. These certificates do not state that no such family as Robbins, was known *in the neighbourhood of Danbury*, as I sincerely believe may yet be proved.\* The time of the enquiring into this fact is also curious: While Robbins was alive, while he claimed (for I again repeat it as a notorious fact, and a fact referred to by Mr. Pickering himself in the first page of the Report, that he did claim) to be a native

\* *Vide appendix No. 5.*

American, no enquiry was thought necessary: while he could have an opportunity to repel by evidence a counter affidavit, none was made: nay the Judge himself appears to have thrown the consideration of citizenship out of the question.—But now, when Robbins has been delivered up and executed—when the enquiry can do him no service, and he is no longer alive to direct or to benefit by it, it has become an important question! The industry of Mr. Pickering has been exerted to bring us proof from all quarters, from Connecticut to Jamaica: the guarded evidence of the wise men of Danbury, and the disinterested testimony of Sir Hyde Parker are set in array against the claim of Robbins. The President transmits this accumulation of irrefragable proof to Congress; our Representatives debate upon it; and the citizenship of Robbins at length becomes a question most material to be ascertained†; If the evidence I have offered is objectionable, what shall we say to Mr. Pickering's authorities? It is well that Congress is not scrupulous about the admissibility of testimony: It is well that the evidence contained in the President's message on this part of Robbin's history, was not subjected to as many tests as I have had to combat!

Gentlemen, I do contend that this is not like a trial on a matter of property, where every technical objection to evidence is admissible. That evidence which does in fact, and ought in reason, to decide your political conduct when you are out of that box, is the kind of evidence which ought to decide mine; and it is unreasonable in my opinion on a political trial to require any other; or to harass a defendant by putting him to the enormous trouble and expence of travelling from one end of the Continent to the other, to bring forward legal evidence of a fact which nobody doubts before hand. I do contend, Gentlemen of the Jury, that there are, and may be certain facts of public politics sufficiently notorious to obviate the necessity of legal proof, and whose notoriety, is itself a matter of fact, which may in all cases be safely left to a Jury to judge of.

The affidavit of Jonathan Robbins so often published, so commonly known, whose authenticity has never been scrupled, tho' its veracity has lately been denied, is one of those notorious facts that fall within the spirit of the preceding observations. While Robbins lived, it was uncontradicted by equal evidence; indeed it is so still: I had reason to give credit to it at the time I wrote, and I believe in the probability of it now.

Gentlemen, I have gone through all the charges; and I am satisfied that I have brought in support of my assertions, the best evidence the nature of my case would admit of.—It is true by resorting to Danbury for depositions and to Charles Town for records, I might have made the evidence in the last charge, more compleat; but I did not and do not think them necessary to produce further conviction on your minds, than you feel on the subject already. This is an important point under the law in question. If such strictness of testimony is required, there is an end at once of all political conversation in promiscuous society. The time, the labour, the difficulty, the

† Why? because the affidavit of Robbins, and the impression made by Robbin's claim must be counteracted. But is not the pains thus taken, full evidence of the Notoriety of the claim?

expence, the harrassment and fatigue, of mind as well as of body, which such doctrine would occasion, to every citizen whom a corrupt administration might determine to ruin, would be an engine of oppression of itself sufficiently powerful to establish a perfect despotism over the press; and would be a punishment for innocence before trial, too severe to be inflicted on sedition itself. I think you must feel the truth of these remarks: the proceedings on this trial, irresistibly suggest them.

Gentlemen, if the assertions I have made are true, whatever the motives of them may be, you cannot find me guilty. But I think it impossible if you consider the paper all together that you can ascribe the publication of it to malice: it is on the force of it not voluntary but compelled. I have in the very outset of the paper spoken well of the President: I have been in the habit of thinking his intentions right, and his public conduct wrong: and that this has been the general tenor of my language and behaviour, I believe I can even now bring proof enough from among my friends and my neighbours. Mr. Cooper calls two witnesses.

*Judge Chase.* This is not necessary: it is your conduct, not your character that is in question. If this prosecution were for a crime against the United States, you might give evidence to your character and shew that you have always been a good citizen, but this is an indictment for a libel against the President, where your general character is not in question.

*Mr. Cooper.* I am satisfied.—I shall fatigue the Jury no longer.—But rest my defence here.

*Mr. RAWLE, in reply:—*

Gentlemen of the Jury,

The defence you have just heard is one of the most extraordinary and unexampled I ever remember to have witnessed in a court of justice. It is no less than to call into decision whether Thomas Cooper, the defendant, or the President of the United States, to whom this country has thought proper to confide its most important interests, is best qualified to judge whether the measures adopted by our government are calculated to preserve the peace and promote the happiness of America. This, however, does not seem to me the real point which you are to try; and I shall therefore (under direction of the court) proceed to state what I conceive to be the question which you, Gentlemen of the Jury are now called upon to determine. Thomas Cooper is charged in the Indictment with having published a false scandalous and malicious libel with intent to defame the President of the United States and to bring him into contempt and disrepute, and to excite against him the hatred of the good people of this country. In the act which defines this offence, and points out the punishment, a liberality of defence is given, unknown I believe in any other Country \* where the party is tried for a libel on the Government. Here, the defendant is allowed under the third section of that act, to give in evidence the truth of the matters charged as a libel in the publication, and the Jury have a right to determine the Law and the fact under the direction of the Court. The

\* *Mr. Rawle forgot that the same defence is given in England under what is called Mr. Fox's bill.*

true spirit of the Law is that the defendant shall not be found guilty of publishing defamatory writings, unless they be false, nor altho' they may be false, shall he be considered as guilty under the law, unless the intent of the publication appear to be malicious.

That such publication has proceeded upon a knowledge of the truth, he is permitted to give as matter of evidence; and if true, it must be allowed to go far to satisfy the minds of the Jury, that the malicious motives imputed to him are not true. In private actions for slander, where a man seeks pecuniary redress for the injury his character has sustained, the defendant is entitled to give in evidence as a defence to the action, the truth of the words spoken or the written libel; and if the truth of the assertions be proved, it will amount to a justification. There is no difference then between the defence that may be set up to an action of slander, or libel on a private person, and that which is permitted under the law whereon this indictment is grounded.

The defendant has undertaken to satisfy the mind of the Jury that in this publication he had no malicious intention against the President of the United States; I join issue with him on the point, and request your particular attention to it. He alledges that he did not impute improper motives to the President, and attempts to substantiate his allegation by referring you to his declaration in the outset where he says that "I cannot believe him (the President) capable of such gross misrepresentations, for I still think well of his intentions, however I may disapprove of his conduct," but to this I shall add that he goes on and concludes with a paragraph, evincing in the clearest manner a settled design to persuade the public that the President of the United States is not fit for the high office he bears, and of this you must be fully convinced from the whole tenor of the expressions which have been read to you in the Indictment.

It is very far from my views to press hard upon any part of his long address to you, or to make use against him of any unguarded expression, which on more deliberate consideration he might have omitted or corrected; yet when I cannot but observe from the whole tenor of his present argument, as well as from his publication, that his object is not so much to convince you Gentlemen of the Jury, that his assertions are true, as to cast an unmerited reflection on the general character and conduct of the President, I cannot help suspecting him of the motives he disclaims, and I must do my duty by exposing the design as well as the fallacy of the justification he has set up.

The defendant has used a little observation respecting the separating in the indictment the text, from the context, as I believe he was pleased to term it; and argued that by this means the most upright intentions and laudable expressions might be perverted from their true and obvious meaning. Such an insinuation however is not calculated to influence your minds. In framing an indictment it is my duty to leave out matters of little importance, and to introduce those circumstances only that are truly and legally reprehensible: and he well knows that he can read if he pleases the whole of the publication, and that you will have it with you when you consider of your Verdict. You will judge therefore whether by this observation it was his, or whether it is my design to confound and perplex the sense.

Whether the reflections he has thrown upon the conduct of Government in so many instances throughout his defence as well as in his publication, evince the regard he professes to entertain for the intentions of the President, is to me as it will be to you extremely dubious; nor have those professions been confirmed by the singular manner in which he has cited and selected the passages on which his defence has been grounded. Throughout the quotations he has made, particularly from the addresses to the President, and the answers to them, there has been a series of misrepresentations which it will be my duty to observe upon when I come to consider that part of the charge and his vindication of it. But it is fair to observe that if from the perusal of partial extracts and passages selected from various publications he has thought proper to publish a libel, such as that for which he is indicted against the character of our President, there is no excuse for his conduct; if on the other hand he had the whole of the publications before him, and has extracted from them partially and unfairly, his conduct is still more reprehensible, and there is the less excuse, as it is evident, and as you Gentlemen of the Jury, must have observed, that he is a man of talents and letters.

Mr. Cooper has thought proper to take up the several passages of his publication in the order in which they stand in the indictment, and in replying to what he has said I shall follow the order he has pursued.

I pass over the passages respecting the incapacity of the President, and the infancy of political mistakes as of no great importance, and proceed to that part of the publication which accuses our Chief Magistrate of having sanctioned and promoted, a permanent navy, a standing army, and a loan at the high interest of 8 per cent in time of peace, while the unnecessary violence of official expressions might justly have provoked a war.

Here then the implication against the President is that at the same time when he was unnecessarily plunging us into a War he promoted a Navy, a standing Army, and borrowed money at an exorbitant interest, the one measure calculated to enslave and the other to oppress. But Gentlemen, how has the defendant shown this, what proof has he offered that these are measures for which the President in particular is blameable? Need I recall to your recollection the Summer of the year 1798 when in consequence of the disgraceful and insulting treatment and rejection of our envoys by the French Government, the Citizens of this Country from every part of the United States addressed the President approving his measures and pledging their support? Amongst others the Marine society at Boston came forward congratulating the American Nation that their beloved Washington has been succeeded by a Man who treads with equal steps the honest plain and strait road so strictly followed by that wise and able statesman.

In this particular case gentlemen, with your permission I will read the whole of the answer (reads the answer from Patriotic Addresses, page 95.) Now gentlemen I appeal to you, was it not natural and becoming, that in answering the address of a marine society, the President should dwell upon the topic most congenial to their institution? Those who do not look with a jealous eye on every action and catch with a propensity to blame at every word he utters, those who know the character of that gentleman in private life, and who have impartially witnessed his unremitting endeavours to pro-

mote the defence and welfare of his country can surely find nothing but what they may sincerely praise in the answer I have just read to you.

The next passage Mr. Cooper has quoted is from the address of the young men of Boston: this address and the answer has been used for two purposes to support; his position that the President had recommended a navy and an army. Gentlemen I will read the whole of the answer (reads from page 370 Patriotic Address.) I confess I was much surprised to find that after the President had recommended them to follow the "example of their fathers, one of whose first principles it was to unite in themselves the character of citizens and soldiers, and especially to preserve the latter always subordinate to the former." I was very much surprised to find that such an answer could be quoted as reprehensible.

To arms then my young friends to arms especially by sea, *to be used as the law directs*. Gentlemen can such sentiments so honestly guarded, be tortured into proof of the Presidents intention to plunge us into a war, to introduce a standing army and a permanent navy? Gentlemen these are not the conclusions *you* will draw. The paternal care of the President has hitherto happily watched over this country, and he knew and wisely signified the time when we ought to be prepared for those gloomy events, which we had too much reason to expect. Whether the adduction of these passages can support the defendant in his defence against a malicious libel you are the best judges.

The defendant has read to you a passage culled from the answer of the President to the students of Dickenson college, wherein he hopes that none of them but such as feel a natural genius and disposition to martial exercise and exertions, will ever be called from the pleasing walks of science to repel any attack on their rights, liberties and independence: surely gentlemen if a moderate and affectionate sentiment of this kind, is to be tortured into an approbation of a military force or a standing army, the most innocent expressions are not safe from perversions. I cannot however forbear to remark with how little propriety the defendant has complained of passages being selected from his publication for indictment without the context as he calls it, when his whole defence rests upon passages thus picked out, to suit the unfair and malicious purposes of his defence, an epithet which I feel myself entitled to use, when I consider how that defence has been conducted and on what it rests.

But gentlemen of the jury, the defendant must have very little knowledge of the existing circumstances of this country,\* when he talks to you

\* Either Mr. Rawle or I, must have very little knowledge of the existing circumstances of this country. I fear he is liable to the retort, *mutato nomine de te fabula narratur*. The term standing army we got from England, when it is applied to a military force in continual and not in periodical discipline like the militia. In that country there has been a standing army i. e. a continued military force independent of the militia for 150 years at least; the men are enlisted for life and yet the mutiny bill under which that force exists is annual. Does Mr. Rawle know or does he not, that in the 5 year-army of this country as judge Chase would call it,—the men continue to be enlisted for 5 years from the date of their enlistment. So that at the end of 2 years for instance, a man is not enlisted for 3 years but still for 5 years! Does Mr. Rawle know that this is conformable to the recommendations of the Secretary at war in his report transmitted to Congress 13th January last? and that the recruiting instructions are to this purpose?

of a standing army. There neither is nor can be a standing army in this country, the appropriations for the pay of the army cannot be made for more than two years at a time, nor has the President more to do with the army than the Congress or the Senate,† and the reflections thrown upon your first magistrate are equally applicable to your representatives. A man so ignorant of the subject, or whose reading has been so careless, is very unqualified to cast a reflection on the conduct of our government, or to instruct the people on the nature and tendency of the measures of administration.

With respect to the loan at 8 per cent. if money has been borrowed at that rate of interest, of which however the defendant has produced to you no proof, it has been done under the authority of Congress and their measures\* in this respect the President has sanctioned as he had a right to do, and as I think (confiding in his wisdom and integrity) he has rightly done.

Gentlemen, I do not pretend to be a judge of the propriety of this measure. The Defendant says no other country has borrowed at so high a rate of interest in time of peace; but neither is he qualified to judge of this any more than myself; those who are qualified and who have been appointed for the purpose, have judged for the nation; and I am satisfied as I doubt not you are. But to raise surmises and suspicions of the wisdom and design of measures of this kind, which he cannot know sufficient of to explain, or the people to understand, is evidence in my opinion that *his* design at least was to excite the hatred of the good people of this country against their President.

The Defendant proceeds to charge the President with unnecessary violence of official expression that might justly have provoked a war. Gentlemen, you all of you know the provoking and unjustifiable conduct of the French Nation towards our envoys: the repeated designs and attempts of this country to procure an adjustment of differences on equitable grounds, and the strange and unexampled propositions made in return by the Government of France. It is not for me to dilate upon these topics, or on the depredations subsequently committed by that Nation on the American Commerce, you all of you know, you all of you must have felt in some degree the consequence of her injustice: the President, far better acquainted with these proceedings against America and the tendency of them, made use of such expressions as the state of the country and the sentiments of the people required. Of this he was the best judge, and I doubt not in this instance as in every other of his wise and patriotic administration he judged for the best. The Defendant however still wiser than the President judged otherwise, and has accordingly ventured to advance before the public the harsh Crimination we are now considering.

Gentlemen, the Defendant has quoted passages from the address of the inhabitants of Vergennes in Vermont. I have before remarked to you the singular, and I think the unfair method of selection the Defendant has

*† Yes he had: for the measures originated from the suggestions in his speeches to Congress, and the reports of his Secretary of war.*

*\* Mr. Rawle probably forgot that the President was authorized to borrow upon such terms, and conditions as he thought most advantageous to the United States; and that the rate of interest was the measure of the Executive Department.*

adopted ; and the impropriety of stating the sentiments of the address itself as if it were the answer of the President and attributable to him. I will read you the passage (reads it.) no such passage appears in the answer of the President, and whether the sentiments contained in it are true or not, they purport to be the sentiments of others and not of the President. Such is the way in which this Defence has been conducted, I will not go through the rest of Mr. Coopers quotations, because I do not think they have produced any effect on your minds or on the minds of the Court, which it is necessary for me to obviate.

The Defendant next recurs to the complaints of the French Government to our Envoys of the Expressions in the President's Speech. No doubt Gentlemen, it was the interest and the inclination of the French Executive to raise up some frivolous objection to the conduct of our Government that they might have some plausible pretext to justify their own.

But I am fully satisfied as I hope and believe you are, that the President of the United States had sufficient foundation for all that he has said on the conduct of France toward this country, and I shall leave you to judge for yourselves whether he or the Defendant are the most proper to decide what conduct or language ought to have been adopted on such provocation.

The next and most serious part of this Indictment is that which relates to Thomas Nash, or, as he has been called, Jonathan Robbins. Gentlemen I will read you the passage in the Indictment (reads it.) Now Gentlemen it is important for you to remember the remote part of the country where this libel was published, and the class of people among whom it was disseminated, \* and consider what must be the effect of assertions thus boldly advanced and strongly stated. Mr. Cooper either had evidence before him of the facts he has asserted respecting this Nash or Robbins, or he had not. If he had no evidence—what shall we say of a man deliberately propagating among an ignorant people, libels of the most serious nature and accusations against the highest characters, which if he does not know to be false he cannot know to be true ? In support of his assertions he has read to you the Message of the President of the United States on the subject of Thomas Nash, or rather he has read in detached parts in a mutilated manner the Letter of Mr. Pickering : it is observable that he could not have had this evidence before him at the time he wrote, and yet this is the only evidence he has offered to the court in his own defence on this part of the charge.

*Mr. Cooper.* I do not wish improperly to interrupt Mr. Rawle, but I did state, that I had other evidence before me : that the facts had been very generally published in the newspapers of every description : that they were commonly known and much discussed : that I offered the Message of the

\* *Mr. Rawle is mistaken in his ideas of the people of Northumberland county. They are as capable of judging as the generality of the people here. There are some men there who hold the same politics with Mr. Rawle (not meaning to include his deputy) of as much natural talent and as much legal acquirement, and as ready to defend the measures of the government without pay, as before the fees he receives. But the good sense of the people is a full balance for the combination of talent devoted to the measures of administration.*

President as additional and corroborative testimony of what was very generally known to the public. Beside this, I had before me Mr. Pinckney's letters containing all the facts: these also were published in the papers before they were collected in a pamphlet, and that pamphlet was published in August 1799; while the paper indicted was not published till November 1799.

*Judge Chase.* Sir you must not indirectly accuse the court of want of indulgence: there has not been any evidence denied you: you may even go into fresh evidence now, if you please.

*Mr. Cooper.* Sir I do not complain of want of indulgence.

*Mr. Rawle, in continuation:* Since the defendant has thought fit to read only a part of Mr. Pickering's letter, I will read the whole of it (Reads mr. Pickering's letter before given in a note.) You observe gentlemen of the jury, that Mr. Cooper omitted all that passage beginning with "Provided no evidence of his criminality, &c." This opinion, given by the President, was confirmed by the vote of the House of Representatives in rejecting a motion criminating his conduct; and it would be confirmed by Mr. Cooper himself as a lawyer, if he had duly considered the subject, or if his opinions had not been warped by the influence of his political prejudices. But gentlemen, suppose the President had not done his duty, as he did—that he had not directed this Nash to be delivered up, then would the party opposed to his administration, have raised an outcry as loud, and perhaps better founded than they have made already. No conduct of the President however wise, no motives however pure, could screen him from the attacks of party spirit. But he has honestly endeavoured to preserve the good faith of the country by carrying a treaty into effect, and I trust he will receive the applause of impartial and competent judges for his behaviour on that occasion.

Gentlemen you have attended to the words of this charge in the indictment, and you cannot but be impressed that they convey on the face and in the very tenor of them, a conclusive proof of a mala mens, of a malicious and deliberate intention to injure the character of the President; no man can read them without receiving this impression from the perusal.

I have not touched on the article respecting the embassies to Prussia, Russia, and the Porte, because I did not think it of importance sufficient to occupy much of your time. Indeed, I believe no embassy was ever sent to Russia.\* There is enough for your consideration against the defendant, without dwelling on these lesser articles of the indictment.

Gentlemen I have no personal animosity against Mr. Cooper, but I have instituted this prosecution because I thought it my duty so to do, and I must make those remarks which the same duty calls forth.

The defendant has endeavoured to shew that his publication was without malice, but his conduct with Squire Buyers and his expressions in that publication prove otherwise; the nature of his defence, though he has stated his opinion of the good intention of the President, evidently shews that he meant to justify his own conduct and language throughout. You

\* But it was projected (my expression) Mr. King was authorized to confer with the Russian ambassador on the subject.

Gentlemen of the Jury under the direction of the court, will decide whether he has presented to you such a justification as will entitle him to your verdict in his favour.

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### JUDGE CHASE's Charge to the GRAND JURY.

*Gentlemen of the Jury. (A.)*

WHEN men are found rash enough to commit an offence such as the Traverfer is charged with, it becomes the duty of the government to take care that they should not pass with impunity—It is my duty to state to you the law on which this indictment is preferred, and the substance of the accusation and defence.

Thomas Cooper the Traverfer stands charged with having published a false scandalous and malicious libel against the President of the United States in his official character as President. There is no civilized country that I know of that does not punish such offences; and it is necessary to the peace and welfare of this country, that these offences should meet with their proper punishment, since ours is a government founded on the opinions and confidence of the people. The Representatives and the President are chosen by the people. It is a government made by themselves; and their officers are chosen by themselves; and therefore if any improper law is enacted, the people have it in their power to obtain the repeal of such law or even of the constitution itself if found defective, since provision is made for its amendment.—Our government therefore is really republican, the people are truly represented since all power is derived from them—it is a government of representation and responsibility—all officers of the government are liable to be displaced or removed, or their duration in office limited by election at fixed periods—there is one department only, the judiciary, which is not subject to such removal; their offices, being held “during good behaviour” and therefore they can only be removed for misbehaviour.

All governments which I have ever read or heard of punish libels against themselves. If a man attempts to destroy the confidence of the people in their officers, their supreme magistrate, and their legislature, he effectually saps the foundation of the government—(B) A republican government can only be destroyed in two ways; the introduction of luxury, or the licen-

A. The reader is requested to pay attention to this charge: it is accurately taken. Some of the points worthy of observation, I have made short notes upon; others I must discuss in my letter to the Judge.

B. I would ask the Judge, whether if the Supreme Magistrate adopts measures inconsistent with the public interest, it is not the duty of every good citizen to expose him to the public? and whether there may not be a Government still existing altho' the Chief Magistrate and every Member of the Legislature were changed? what is the use of Election in a free Government, but for the People to express whether their Supreme Magistrate and their Legislators deserve their further confidence or not?

tiousness of the press. (C) This latter is the more slow but most sure and certain means of bringing about the destruction of the government. The legislature of this country knowing this maxim, has thought proper to pass a law to check this licentiousness of the press—by a clause in that law it is enacted (reads the second section of the sedition law.)

It must therefore be observed, Gentlemen of the Jury, that the *intent* must be plainly manifest; it is an important word in the law, for if there is no such intent to defame, &c. there is no offence created by that law.

Thomas Cooper then, stands indicted for having published a false scandalous and malicious libel upon the President of the United States with intent to defame the President, to bring him into contempt and disrepute, and to excite against him the hatred of the good people of the United States. This is the charge: The Traverser has pleaded Not Guilty, and that he has not published, &c. with these views—he has also pleaded in justification (which the law provides for) that the matters asserted by him are true, and that he will give the same in evidence.

It is incumbent on the part of the prosecution to prove two facts,

1st. That the Traverser did publish the matters contained in the indictment.

2d. That he did publish with intent to defame, &c.

For the intent is as much a fact as the other, and must be proved in the same manner as other facts; and must be proved as stated in the law of Congress—the mere publication is no offence; and in making up your verdict, though you consider them separately, you must take the whole tenor and import of the publication, since the offence is committed by the two coupled together.

First then as to the publication.

The fact of writing and publishing is clearly proved, nay in fact, it is not denied—it is proved to have taken place at Sunbury a considerable distance from the seat of government: It appears from the evidence, that the Traverser went to the house of a justice of the peace with this paper, whom, of all others, he ought to have avoided, (D) For he must know that it was the duty of the justice of peace to deliver it immediately to those who administer the government: He did so. It was indecent to deliver such a paper to a justice of the peace, and the manner in which it was delivered was yet more outrageous—if it was done in joke as the Traverser would wish to imply, it was still very improper—but there was the same solemnity in his expression “ this is my name, and I am the author of this hand-bill” as if the Traverser was going to part with an estate.—This conduct shewed that he intended to dare and defy the government, and to provoke them, and his subsequent conduct satisfies my mind, that

C. On this most extraordinary position, I would ask, 1st. what Government ever was destroyed by the licentiousness of the Press? 2ly. what Government ever was destroyed by Luxury? 3ly. whether a standing army has not been the principal cause of the destruction of every Government ancient or modern that approached to a Republic?

D. Is it a crime that I do not shelter myself under anonymous signature? that what I do, I do openly? This man had already been employed as the tool of a party secretly to hunt out evidence against me: I knew it. I felt myself conscious of no crime: was it criminal in me to banter the official zeal of a party runner?

such was his disposition.—For he justifies the publication in all its parts, and declares it to be founded in truth—it is proved most clearly to be his publication. It is your business to consider the intent as coupled with that, and view the whole together: You must take that publication and compare it with the indictment, if there are doubts as to the motives of the Traverser he has removed them, for though he states in his defence that he does not arraign the motives of the President, yet he has boldly avowed that his own motives in this publication were to censure the conduct of the President, which his conduct, as he thought, deserved.—Now Gentlemen, the motives of the President in his official capacity, are not a subject of enquiry with you. Shall we say to the President, you are not fit for the government of this country? It is no apology for a man to say, that he believes the President to be honest, but that he has done acts which prove him unworthy the confidence of the people, incapable of executing the duties of his high station, and unfit for the important office to which the people have elected him—the motives and intent of the Traverser, not of the President is the subject to be enquired into by you.

Now we will consider this libel as published by the defendant, and observe what were his motives. You will find the Traverser speaking of the President in the following words: “ Even those who doubted his capacity, thought well of his intentions.” This the Traverser might suppose would be considered as a compliment as to the intentions of the President, but I have no doubt that it was meant to carry a sting with it which should be felt; for it was in substance saying of the President, “ you may have good intentions, but I doubt your capacity.” (E)

He then goes on to say, “ Nor were we yet saddled with the expence of a permanent navy, nor threatened under his (the President’s auspices) with the existence of a standing army. Our credit was not yet reduced so low as to borrow money at eight per cent. in *time of peace.*” Now Gentlemen, if these things were true, can any one doubt what effect they would have on the public mind? If the people believed those things what would be the consequence.—What, the President of the United States saddle us with a permanent navy, encourage a standing army, and borrow money at a large premium? And are we told too that this is in time of peace? If you believe this to be true, what opinion can you, Gentlemen, form of the President? One observation must strike you, viz. That these charges are made not only against the President, but against yourselves who elect the House of Representatives, for these acts cannot be done without having been approved of by Congress. (F) Can a navy be built, can an army be raised, or money borrowed, without the consent of Congress?

E. This is the first time the public have been informed, that it is a crime to doubt the capacity of a President. Is it not a good reason for refusing to vote for a man that you doubt his capacity for the Office? I voted for the Electoral Ticket friendly to Mr. Jefferson at the last Election, because I doubted Mr. Adam’s capacity to fill the office he now holds: I did not then doubt his intentions. I hope I shall have an opportunity of voting again, and the same reason that decided me before, will go far to decide my vote again.

F. If Judge Chase had read as he ought to have done the Act of Congress relating to the Loan, he would have found that the rate of Interest was left to the executive, and that no subsequent approbation was made necessary.

The President is further charged for that "the unnecessary violence of his official expressions might *justly* have provoked a war." This is a very serious charge indeed—what, the President by unnecessary violence plunge this country into a war! and that a *just* war? It cannot be—I say Gentlemen again, if you believe this, what opinion can you form of the President? Certainly the worst you can form: You would certainly consider him totally unfit for the high station, which he has so honourably filled and with such benefit to his country. (G)

The Traverser states that under the auspices of the President "our credit is so low that we are obliged to borrow money at eight per cent. in time of peace." I cannot suppress my feelings at this gross attack upon the President—Can this be true? Can you believe it? Are we now in time of peace? Is there no war? No hostilities with France? Has she not captured our vessels and plundered us of our property to the amount of millions? Has not the intercourse been prohibited with her? Have we not armed our vessels to defend ourselves, and have we not captured several of her vessels of war? Although no formal declaration of war has been made, is it not notorious that actual hostilities have taken place? And is this then a time of peace? The very expence incurred, which rendered a loan necessary was in consequence of the conduct of France. The Traverser therefore has published an untruth, knowing it to be an untruth.

The other part of the publication is much more offensive: I do not allude to his assertions relating to the embassies to Prussia, Russia and the Sublime Porte. They are matters of little consequence, and therefore I shall pass over them. The part to which I allude is that where the traverser charges the President with having influenced the judiciary department. I know of no charge which can be more injurious to the President than that of an attempt to influence a court of judicature: the judicature of the country is of the greatest consequence to the liberties and existence of a nation. If your constitution was destroyed, so long as the judiciary department remained free and uncontroled, the liberties of the people would not be endangered. (H.) Suffer your courts of judicature to be destroyed—there is an end to your liberties. The traverser says that this interference was a stretch of authority that the monarch of Great-Britain would have shrunk from; an interference without precedent, against law and against mercy. Is not this an attack, and a most serious attack on the character of the President?

The traverser goes on thus—"This melancholy case of Jonathan Robbins, a native citizen of America, forcibly impressed by the British, and delivered with the advice of Mr. Adams to the mock trial of a British court-martial, had not yet astonished the republican citizens of this free country! A case too little known, but of which the people ought to b

G. I ask again, is it criminal for me to differ in opinion from Judge Chase, and to think Mr. Adams unfit for the high station he fills? What becomes of the very foundation of our elective rights, if we are liable to punishment for considering a chief Magistrate unfit for his situation? how many people in this country are there, who cannot help thinking thus of Mr. Adams? I sincerely believe a large majority. He may be a very good man and a very sensible man, and yet not fit for his situation.

H. So, provided our Judges are upright, the Liberties of the People would not be endangered tho' our Legislatures were abolished, and we had a hereditary Tyrant on the Throne!

" fully apprized before the election, and they SHALL be." Now gentlemen, there are circumstances in this publication which greatly aggravate the offence—The traverser does not only tell you that the President interfered to influence a court of justice without precedent against law and against mercy; but that he so interfered in order to deliver up a native American citizen to be executed by a British court-martial *under a mock trial*, against law and against mercy. Another circumstance is adduced to complete the picture—He tells you that this Robbins was not only an American, but a native American, forcibly impressed by the British; and yet that the President of the United States, without precedent, against law and against mercy, interfered with a court of justice, and ordered this native American to be delivered up to a mock trial by a British court-martial. I can scarcely conceive a charge can be made against the President of so much consequence, or of a more heinous nature. But, says Mr. Cooper, he has done it: I will shew you the case in which he has done it—It is the case of Jonathan Robbins. It appears then that this is a charge on the President, not only false and scandalous, but evidently made with intent to injure his character and the manner in which it is made is well calculated to operate on the passions of Americans, and I fear such has been the effect. If this charge were true, there is not a man amongst you but would hate the President; I am sure I should hate him myself if I had thought he had done this. Upon the purity and independence of the judges depends the existence of your government and the preservation of your liberties. They should be under no influence—they are only accountable to God and their own consciences—your present judges are in that situation.

There is a little circumstance which the attorney-general in his observations to you omitted to state, (1) but which I think it right to recall to your recollection, as it appears with what design the traverser made this publication. In this allusion to Jonathan Robbins he expressly tells you this is " a case too little known, but of which the people ought to be fully apprized before the election, and they shall be." Here then the evident design of the traverser was, to arouse the people against the President so as to influence their minds against him on the next election. I think it right to explain this to you, because it proves, that the traverser was actuated by improper motives to make this charge against the President. (K.)—

I. In England the Judge is considered not as the accuser but rather as the advocate for a defendant on a prosecution; even where he has counsel.—But I never knew him supply the omission of an Attorney General, and argue the cause against a prisoner, and dwell upon every minute circumstance of aggravation.

K. I never knew before that it was criminal to discuss the political conduct of a public character to influence the public either for or against such public character. Would it be criminal to write a panegyric on Mr. Adams against the next election? or must every man be indicted who does not speak or write in his praise if at all? I DID mean to influence the election as far as I could. I DID mean, without imputing improper motives to Mr. Adams, to state it as my opinion that he was comparatively unfit for his situation. I PRINT THIS TRIAL NOW, not merely to vindicate my own character, but to open the eyes of the public to the tendency of measures countenanced by Mr. Adams, and to the strange doctrines advanced by his adherents, so that the people may be informed *against the next election*. And I solemnly call upon them to judge whether Trials of this kind do not disgrace the administration of Mr. Adams; and tend materially to abridge the freedom of the press, by punishing those who utter what they conscientiously believe to be true.

It is a very heavy charge, and made with intent to bring the President into contempt and disrepute, and excite against him the hatred of the people of the United States.

The traverser has read in evidence a report made by the President to the house of representatives and a letter written by the secretary of state to shew that the president had advised and directed this Robbins to be given up ; but subsequent facts could not excuse the traverser for what he had written before. (L.)

Now, gentlemen, with regard to this delivery of Jonathan Robbins, I am clearly of opinion that the President could not refuse to deliver him up. This same Jonathan Robbins, whose real name appears to have been Nash, (M.) was charged with murder committed on board the Hermione British ship of war. This Nash being discovered in America, the British minister made a requisition to the President that he should be delivered up. Then we must enquire whether the President was obliged to give him up ? By the 27th article of the treaty with Great-Britain, it is stipulated, " that either of the contracting parties will deliver up to justice all persons (who being charged with murder or forgery committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided this shall be done only on such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had been there committed." If the President therefore, by this treaty was bound to give this Nash up to justice he was so bound by law ; for the treaty is the law of the land : if so, the charge of interference to influence the decisions of a court of justice, is without foundation : the reason why this article was inserted in the treaty is evident — Murder is a crime against the laws of God and man, and ought never to be committed with impunity. Forgery is an offence affecting all commercial countries, and should never go unpunished ; and therefore every government, especially a commercial one, acts wisely in delivering fugitives guilty of such crimes to justice. Nash was charged with having committed murder on board a British ship of war : now a dispute has arisen whether murder (N.) committed on board such a ship of war was committed within the jurisdiction of Great-Britain, I have no doubt as to the point.— All vessels, whether public or private, are part of the territory and within the jurisdiction of the nation to which they belong. This is according to the law of nations.—All nations have this jurisdiction, and the reason is

L. I appeal to the legal public whether this be law : whether the issue being TRUE or not TRUE, any competent evidence to prove the truth, does not go to issue.

M. How does the Judge know this ? is there any thing like *proof* of this in the President's Message ? Is the bare assertion of Mr. Pickering at second, third, or fourth hand, conclusive evidence ? or is this taken as a matter of notoriety ? Throughout the whole of Mr. Rawle's reply, and the Judge's charge, a number of political and other facts are taken for granted upon the ground of notoriety, of which not a particle of evidence appeared on the trial.

N. I shall take an opportunity presently of recalling to the Judge's recollection what he ought to have stated to the jury, that the charge was piracy as well as murder.

obvious, for every country carrying on commerce is answerable to other nations for the conduct of their subjects on the ocean. Were it not so, crimes committed on board vessels of war would go unpunished ; for no other country can claim jurisdiction. This person then was charged with murder committed on board a British ship of war. I say it was committed within the jurisdiction of Great Britain. By the constitution (since the treaty is the law of the land) America was bound to give him up : but who is the person to deliver up a fugitive according to that article in the treaty ? The president was the only person to take the proper steps and to take cognizance of the business—He represents the United States in their concerns with foreign powers : this affair could not be tried before a court of law—No court of justice here has jurisdiction over the crime of murder committed on board a British ship of war. Now, as a requisition was made to the President on the part of the British government to deliver this man up, it became necessary to know whether there was sufficient evidence of his criminality pursuant to the treaty.—The judge of the court of Carolina was therefore called upon to inquire into the evidence of his criminality : he was the instrument made use of by the President to ascertain that fact : (O) his delivery was the necessary act of the President which he was by the treaty and the law of the land bound to perform ; and had he not done so, we should have heard louder complaints from that party who are incessantly opposing and calumniating the government, that the President had grossly neglected his duty by not carrying a solemn treaty into effect. Was this then an interference on the part of the President with the judiciary without precedent, against law and against mercy ; for doing an act which he was bound by the law of the land to carry into effect and over which a court of justice had no jurisdiction ? (P.) Surely not ; neither has it merited to be treated in the manner in which the traverser has done in his publication—A defence of greater novelty I never heard before.

Take this publication in all its parts, and it is the boldest attempt I have known to poison the minds of the people. He asserts that Mr. Adams has countenanced a Navy, that he has brought forward measures for raising a standing army in the country.—The traverser is certainly a scholar, and has shewn himself a man of learning, and has read much on the subject of armies. But to assert, as he has done, that we have a standing army in this country, betrays the most egregious ignorance, or the most wilful intentions to deceive the public. (Q.) We have two descriptions of armies in this country—we have an army which is generally called the Western army, enlisted for five years only—can this be a standing army ? Who raises them ? Congress. Who pays them ? The people. We have also another army, called the provisional army which is enlisted during the existence of the war with France—neither of these can with any propriety

O. Is this true ? Did the President in the first instance direct Judge Bee to ascertain that fact ? But Judge Chase perhaps means this constructively : but is this true ? For was it deemed his duty by Judge Bee, or was it required by the President that the fact thus ascertained should be transmitted ? No : the application of Mr. Liston suggested the conduct of the President.

P. Yet the Supreme Court seems to have thought otherwise in the United States, vs. Judge Laurence.

Q. I shall consider these assertions presently.

be called a standing army—In fact we cannot have a standing army in this country, the Constitution having expressly declared that no appropriation shall be made for the support of an army longer than two years—Therefore as Congress may appropriate money for the support of the army annually and are obliged to do it only for two years, there can be no standing army in this country until the Constitution is first destroyed.

There is no subject on which the people of America feel more alarm, than the establishment of a standing army. Once persuade them that the government is attempting to promote such a measure, and you destroy their confidence in the government. Therefore to say, that under the auspices of the President, we were saddled with a standing army, was directly calculated to bring him into contempt with the people, and excite their hatred against him.

It is too much to press this point on the Traverser. But he deserves it. This publication is evidently intended to mislead the ignorant, and inflame their minds against the President, and to influence their votes on the next election.

The Traverser says, he has proved that the President has advocated a standing army—how has he proved it? There is no standing army; I have before stated the army is only raised for five years, and during the existing differences—He tells you, Mr. Adams is a friend to the establishment of a navy—I wonder who is not a friend to a navy which is to protect the commerce and power of this country.

The Traverser has, to prove these points, read to you many extracts from the addresses and answers to the President. He has selected a number of passages which he asserts, prove the approbation of the President to the creation of a navy, and forming a standing army. But we are to recollect gentlemen, that when in consequence of the unjust proceeding of France, the great mass of the people thought proper to address the President, expressing in those addresses sentiments of attachment and confidence in the President, and their determination to resist the oppression of the French government: the President replied to them in answers which generally were the echo of their sentiments, and in fact his expressions were as general as the nature of the addresses would permit—Therefore the Traverser ought to have blamed the addressers, and not the President. The Marine Society of Boston, as old seamen, address the President in favour of a navy, the President in reply thinks a navy is the proper defence of the country.

I believe, gentlemen, in the first part of my charge I made remarks on the assertions of the Traverser, that the President had borrowed money at 8 per cent. in time of peace. Therefore it will not be necessary to enlarge on that point.

You will please to notice, gentlemen, that the Traverser in his defence must prove every charge he has made to be true; he must prove it to the marrow. If he asserts three things, and proves but one, he fails—if he proves but two, he fails in his defence, for he must prove the whole of his assertions to be true. If he were to prove that the President had done every thing charged against him in the first paragraph of the publication—though he should prove to your satisfaction, that the President had in-

terfered to influence the decisions of a court of justice, that he had delivered up Jonathan Robbins without precedent, against law and against mercy, this would not be sufficient, unless he proved at the same time, that Jonathan Robbins was a native American, and had been forcibly impressed, and compelled to serve on board a British ship of war.—If he fails therefore, gentlemen, in this proof, you must then consider whether his intention in making these charges against the President were malicious or not—It is not necessary<sup>1</sup> for me to go more minutely into an investigation of the defence. You must judge for yourselves—you must find the publication, and judge of the intent with which that publication was made, whether it was malice or not? If you believe that he has published it without malice or an intent to defame the President of the United States, you must acquit him—If he has proved the truth of the facts asserted by him you must find him Not Guilty.

After the jury had returned with a verdict of GUILTY:—

*Judge Chase.* Mr. Cooper, as the jury have found you guilty we wish to hear any circumstances you have to offer in point of the mitigation of the fine the court may think proper to impose on you, and also in extenuation of your punishment. We should therefore wish to know your situation in life in regard to your circumstances—It will be proper for you to consider of this: as you are under recognizance, you will attend the court some time the latter end of the week—(The court appointed Wednesday.)

*Proceedings on Wednesday, April 30. 1800.*

*Judge Chase.* Mr. Cooper, have you any thing to offer to the court previous to passing sentence.

*Mr. Cooper.* The court have desired me to offer any thing relating to my circumstances in mitigation of the fine, or any observation that occurs to me in extenuation of the offence. I have thought it my duty (not for the purpose of deprecating any punishment which the court may deem it proper to inflict, but) to prevent any accidental or apparent harshness of punishment on part of the court, for want of that information which it is in my power to give. For this reason therefore, and that the court may not be misled, I think it right to say that my property in this country is moderate. That some resources I had in England, commercial failures there, have lately cut off: that I depend principally on my practice: that practice imprisonment will annihilate. Be it so. I have been accustomed to make sacrifices to opinion, and I can make this. As to circumstances in extenuation, not being conscious that I have set down ought in malice, I have nothing to extenuate.

*Judge Chase.* I have heard what you have to say. I am sorry you did not think proper to make an affidavit in regard to your circumstances, you are a perfect stranger to the court, to me at least. I do not know you personally—I know nothing of you more than having lately heard your name mentioned in some publication.—Every person knows the political disputes which have existed amongst us. It is notorious that there are two parties in the country; you have stated this yourself.—You have taken one side—we do not pretend to say that you have not a right to express your sentiments, only taking care not to injure the characters of those to whom you are opposed.

Your circumstances ought to have been disclosed on affidavit that the court might have judged as to the amount of the offence ;—nor did we want to hurt you, by this open disclosure.

*Mr. Cooper.* I have nothing to disclose that I am ashamed of.

*Judge Chase.* If we were to indulge our own ideas, there is room to suspect that in cases of this kind, where one party is against the government, gentlemen who write for that party would be indemnified against any pecuniary loss ; and that the party would pay any fine which might be imposed on the person convicted. You must know, I suppose, before you made any publication of this kind, whether you were to be supported by a party or not, and whether you would not be indemnified against any pecuniary loss—if the fine were only to fall on yourself, I would consider your circumstances, but if I could believe you were supported by a party inimical to the government, and that *they* were to pay the fine, not you, I would go to the utmost extent of the power of the court. I understand you have a family, but you have not thought proper to state that to the court. From what I can gather from you, it appears, that you depend on your profession for support—we do not wish to impose so rigorous a fine as to be beyond a persons abilities to support, but the government must be secured against these malicious attacks. You say that you are not conscious of having acted from malicious motives. It may be so; saying so, we must believe you—but the jury have found otherwise: you are a gentleman of the profession, of such capacity and knowledge, as to have it more in your power to mislead the ignorant. I do not want to oppress, but I will restrain, as far as I can all such licentious attacks on the government of the country.

*Mr. Cooper.* I have been asked by the court whether in case of a fine being imposed upon me, I shall be supported by a party—Sir I solemnly aver that throughout my life, here and elsewhere, among all the political questions in which I have been concerned, I have never so far demeaned myself as to be a party writer. I never was in the pay, or under the support of any party—there is no party in this or any other country, that can offer me a temptation to prostitute my pen.—If there are any persons here who are acquainted with what I have published, they must feel and be satisfied that I have had higher and better motives, than a party could suggest. I have written to the best of my ability, what I have seriously thought would conduce to the general good of mankind. The exertions of my talents such as they are, have been unbought, and so they shall continue—they have indeed been paid for, but they have been paid for by myself, and by myself only, and sometimes dearly. The public is my debtor, and what I have paid or suffered for them, if my duty should again call upon me to write or to act, I shall again most readily submit to. I do not pretend to have no party opinions, to have no predilection for particular descriptions of men or of measures; but I do not act upon minor considerations: I belong here as in my former country to the great party of mankind. With regard to any offers which may have been made to me to enable me to discharge the fine which may be imposed, I will state candidly to the court what has passed, for I wish not to conceal the truth: I have had no previous communication or promise whatever, I have since had no specific promises of money or any thing else. I wrote from my own suggestions. But many of my friends have in the expectation of a verdict

against me, come forward with general offers of pecuniary assistance: these offers I have hitherto neither accepted nor rejected. If the court should impose a fine beyond my ability to pay, I shall accept them without hesitation, but if the fine be within my circumstances to discharge, I shall pay it myself: But the insinuations of the court are ill founded, and if you sir, from misapprehension, or misinformation have been tempted to make them, your mistake should be corrected.

*Judge Peters.* I think we have nothing to do with parties—we are only to consider the subject before us—I wish you had thought proper to make an affidavit of your property—I have nothing to do, fitting here, to enquire whether a party in whose favour you may be, or you, are to pay the fine. I shall only consider your circumstances, and impose a fine which I think adequate; we ought to avoid any oppression. It appears that you depend chiefly upon your profession for support. Imprisonment for any time would tend to increase the fine, as your family would be deprived of your professional abilities to maintain them.

*Judge Chase.* We will take time to consider this. Mr. Cooper you may attend here again.

*Thursday.* Mr. Cooper attended and the court sentenced him to pay a fine of four hundred dollars: to be imprisoned for six months, and at the end of that period to find surety for his good behaviour, himself in a thousand, and two sureties in five hundred dollars each.

#### APPENDIX, No. I.

##### *List of the Grand Jury:*

Joseph Coperthwaite, foreman	
Israel Whelen	Joseph Ball
Wm. Turnbull	James Read
Andrew Tybout	William Montgomery
Peter Browne	Jonathan Jones
John Lardner	Peter Wikoff
Daniel Smith	William Warner
James Craig	Benjamin Bartholomew
Philip Wager	David Denny
Robert Smith	William Hall
James Crawford	Casper W. Morris.

#### APPENDIX. No. II.

*Extracts from a Plan for the general arrangement of the Militia of the United States, made by H. Knox, Secretary for the Department of War, and approved by General Washington date 18th. January 1790.*

The introduction 6th. page. It is the intention of the present attempt to suggest the most efficient system of defence which may be compatible with the interests of a free people &c.

The modern practice in Europe with respect to the employment of standing armies, has created such a mass of opinion in their favour, that even

philosophers and the advocates of liberty have frequently confessed their use and necessity in certain cases.

But whoever seriously and candidly estimates the power of discipline and the tendency of military habits, will be constrained to confess, that whatever may be the efficacy of a standing army in war, it cannot in peace be considered as friendly to the rights of human nature, &c. But any argument on this head may be considered as unnecessary to the enlightened Citizens of the United States.

A small corps of well disciplined and well informed Artillerists and Engineers, and a legion for the protection of the frontiers and the magazines and arsenals, are *all* the military establishment which may be required for the present use of the United States.—The *privates* of the Corps to be enlisted for a certain period, and after the expiration of which to return to the mass of the people.

Page 7. An energetic national militia is to be regarded as the *capital security* of a free republic; and not a *standing army*, forming a distinct class in the community.

It is the introduction and diffusion of vice and corruption of manners into the mass of the people, that renders a standing army necessary.—It is when public spirit is despised, and avarice, indolence and effeminacy of manners predominate, and prevent the establishment of institutions which would elevate the minds of the youth in the paths of virtue and honour, that a standing army is formed and riveted for ever, &c.

If it should be decided to reject a standing army for the military branch of the government, as possessing too fierce an aspect, and being hostile to the principles of liberty, it will follow that a well-constituted militia ought to be established, &c.

Such were the sentiments of General Washington's Secretary at war.—Let us now turn to the opinions of Mr. Adam's Secretary at war.

I have already noticed the report of the Secretary at war, of December 24th. 1798, and the force therein mentioned, of 50,000 men.

In his report transmitted by the President to Congress 13th. January 1800, there is an elaborate plan for a military Academy: he states the expence of the two regiments of artillerists and engineers, as they now stand *on the establishment*. (page 23)—He submits the preceding plan as essential to the improvement of our military establishment. (page 24)—He considers the volunteer associations as a reserve body to reinforce our *regular army*.—He recommends enlistments for 5 years in future, if it should be deemed expedient to *keep up* a peace establishment more extended than before. (page 27)—He states in page 35 the positions of the existing regular force, and speaks of the four regiments of Infantry and the two companies of Cavalry on the *permanent establishment*.

His letter (13th. February 1800) to the chairman of the Committee of Congress on so much of the speech of the President as relate to a *a system of national defence*, is a laboured exposition of the inutility and inefficacy of a militia, and the absurdity of relying on this means of defence.—In the very outset he declares “That it is not conceived the United States will ever be “ disposed to place their reliance for defence against a foreign invading enemy “ on militia alone, but that they will *at all times maintain a body of regular troops commensurate with their ability to maintain them.*” Page 5 and 6 of that letter are occupied in arguments against the militia system

the whole letter is a recommendation of a permanent establishment of regular troops.—The reports are recommended to the serious considerations of Congress by President Adams ; and the letter to the Chairman, is a comment on that part of the President's speech which gave rise to the Committee.

From these extracts the public must draw their own conclusions.—Had I produced *all* the evidence in my power on the various charges in the indictment, the day would hardly have sufficed for the defence ; and the patience and attention of the Court the Jury, the auditors and myself, would have been exhausted long before the close.

The troops on the permanent establishment or what Judge Chase would call the five year army are now enlisted for five years *from the date of their enlistment*

### APPENDIX No. III.

*Extracts from Addresses to the President and answers thereto during the summer of 1798.*

Answer to the addressees of Dedham and other towns county of Norfolk, Massachusetts. Patriotic addresses, p. 79, Feno's Gazette, August 9, 1790.

" That we have thought too well of France, and France too meanly of us, I have been an eye and ear witness for twenty years. \*\*\*\* For delaying counsels the constitution has not made me responsible, but while I am entrusted with my present powers, and bound by my present obligations, you shall see no more delusive negociations. In my opinion, as well as yours, there is no alternative between war, and submission to the executive of France.

Answer to the address of the Boston Marine society. Pat. Add. p. 69.

" The French revolution has ever been incomprehensible to me. The substance of all I can understand of it is, that one of the pillars of the ancient monarchy, that is the army, has fallen upon the other two, the nobility and clergy, and broken them both down ; the building has fallen of course, and this pillar is now the whole edifice. The military support has swallowed that of Adam and all the rest. If the example should be followed through Europe, when the officers of the armies begin to quarrel with one another, five hundred years more of Baron's wars may succeed. If the French therefore will become the enemies of all mankind by forcing all nations to follow their example, in the subversion of all the political, religious and social institutions, which time, experience and freedom, have sanctioned, they ought to be opposed by every country that has any pretensions to principle, spirit and patriotism.

*Address of the Inhabitants of Sunbury and Northumberland—Pat. Add. 229, Feno—May 30, 1798.*

" We see her in fact as a Mount Ætna casting from her principles which have a tendency to consume religion, virtue and liberty. Her complaints of the treaty made between Great-Britain and this country we consider as the wicked pretence for plunder and piracy." Answer— " I wish it were in my power to soften your picture of those who injure and insult us."

In the answer to the address of the students of Dickinson College, pat.

add. 240, Feno, June 30, 1798. "It is a question whether even an equitable treaty, under such circumstances of indecency, insolence and tyranny, ought ever to be ratified by any nation."

Answer to the address of the officers of the Militia of Newcastle county.— "There is too much reason to believe that an unbounded ambition for universal empire, and an insatiable avarice of money united with the delirium of victory and a sanguine confidence that they are at least for a time the masters of the world, have dictated their insufferable arrogance, trampling alike on their own constitution and the rights of their people, on the law of nations and on the faith of treaties."

Answer to the address of Harrison county, Virglnia, pat. add. p. 316— "It is impossible to be at peace with fraud and violence, with despotism, anarchy and impiety. A purchased peace would continue no longer than you continued to pay; and the FIELD of BATTLE at once is preferable to a course of perpetual and unlimitted contribution."

The following passage is so liable to be construed as a confession of Mr. Adams's leaning toward the British, that it is impossible it should not have given offence to the power with whom we are now negociating:

Answer to the address from Concord in Massachusets, pat. add. 51, Feno, August 16, 1798. "As I have ever wished to avoid as far as necessity and prudence would admit, every concealment from my fellow-citizens of my real sentiments in matters of importance, I will venture to ask you whether it is consistent with the peace we have made, the friendship we have stipulated, or even with civility to express a marked resentment to a foreign power (Great-Britain) who is at war with another, whose ill will we experience every day, and who will very probably, in a few weeks, be acknowledged an enemy in the sense of the law of nations: a power too which invariably acknowledged us to be a nation for 15 years; a power that has never had the insolence to reject your ambassadors; a power that at present convoys your trade and their own at the same time."

I shall close this collection with the President's famous description of republican government. He had already told the Boston Marine Society that the French revolution had ever been incomprehensible to him.

Address of the Artillery, Cavalry, Infantry and others, inhabitants of Rutland, in Vermont, Feno, July 3, 1798. "But when she denounced her God, and paid a mock of adoration to a harlot; when she murdered or banished without cause or without trial her best citizens; when instead of using her arms in her own defence, she invaded, conquered and pillaged weak and divided states around her, our charity was lost in the enormity of her crimes, and sober men presaged to us that a nation regarding all ties of religion and morality, and the observance of its own constitution and laws, would &c. &c. &c."

Answer. "The words republican government which never have been and never can be generally disgraced in the minds of men without danger of universal despotism have imposed on many who had very imperfect ideas under them: as there are none in our language more indeterminate, they may be interpreted to mean any thing. A republican government for 30 millions of people must be very well digested, or it wl be

" more arbitrary and tyrannical than despotism itself. The monarchy of France was freedom in comparison with anarchy." The public must judge how far these specimens of irritating language are defensible. Might they not as well have been avoided? Is it from such expressions that Mr. Adams can claim to be re elected to the Presidency of a republican government?

#### APPENDIX No. IV.

I do not know of any legal proof that Fenno's paper is under the controul of the cabinet here, or that Cobbett was paid by the British Minister. Mr. Talleyrand however is not the only person who has made a similar acculcation as to these papers. On the 29th of March 1798 Mr. Giles, in Congress, said, " Gentlemen talked of news-papers, he would say a word on that subject: there are two papers in this city which not only breathe defensive but offensive war of the worst kind. One of these papers he believed was particularly countenanced by the government. The other was printed by infamous scoundrel, a British subject, a paper which he was sorry to find much countenanced. This paper not only breathes war, but exterminating war. And this paper issuing from a British press, spreads its baneful influence through the country. He proclaimed this fact, and he should think himself a traitor to his country if he did not proclaim it." This extract is to be found in Porcupine's Gazette of April 3, 1798, and in Fenno's Gazette of March 31 1798, without remark or contradiction in either.

The preliminary question to which I alluded, when I moved for a Subpoena for the President, was the authority of Fenno's Gazette, which I wanted to quote; and I wished for the testimony of the President to that point, that I might bring the evidence of that paper still more compleatly within the case of Rex vs. Holt, 5 T. Rep. 442. The President however escaped the train of questions which this subject would have brought on.

The pamphlet alluded to by Mr. Talleyrand, seems to have been that scurrilous production of Cobbett Le Gros Mousquiton Diplomatique, or the Diplomatic Blunderbus: a satire on Mr. Adet, the then French minister to the United States. The advertisement of his pamphlet with still more insulting language, in Brown's Philadelphia Gazette of Nov. 26 1796, is now before me.

#### APPENDIX, No. V.

*In the True American of April 14 1800, Mr. Gallatin, whose caution as well as acuteness is sufficiently well known to the public, is stated to have expressed himself to this purpose:*

*The Danbury certificates so much relied on amounted only to negative proof which was no proof whatever; and in opposition, if not to those certificates, at least to the inferences drawn from them, he would say that he had information, from authority sufficient to have convinced him and sufficient to justify his repeating it on this floor, that there had been a family, by the name of Robbins, living either in the town of Danbury or in its immediate neighbourhood, a tho' they had removed many years ago to another state; that the man calling himself Jonathan Robbins, if he did really belong to that family, should have supposed the place of his birth to be Danbury, although it might be the next town to it, that he should have made the mistake in his relation to a*

"place which he had left in his infancy, could by no means invalidate his testimony. On the other hand, if the man who had been delivered up did not belong to that family, if he was not Robbins, but Nash the Irishman, how had it happened that he should so strangely have guessed at the place where the family whose name he had assumed had resided perhaps more than twenty years before? He, the supposed Nash, in the first place obtains a notarial protection dated at New-York in 1795, by the name of and signed Jonathan Robbins, stating him to be a native of Connecticut, but without specifying the town. In 1799 in open court before Judge Bee, his, the supposed Nash's hand writing appears similar to the signature of Robbins affixed to the notarial protection; he at the same time, by his affidavit, designates the town of Connecticut, where he pretends to have been born; and although that town was not designated in the protection he must be supposed to have obtained fraudulently, yet he divines either the identical town where a Robbins family had formerly resided, or one adjoining to it."

This led me to make further enquiry, and I had reason to believe that Mr. J. Davenport was capable of giving information respecting the uncertain limits of the town of Danbury at the time when Robbins might be presumed to have lived there, and even that such a family did formerly live in the town or the neighbourhood. I find on subsequent enquiry that Col. Lyon has not conversed directly with the brother of Jonathan Robbins, but that his neighbour Dr. Shaw has conversed with a man of the name of Robbins, who declared himself to have lived formerly near Danbury, who had a brother named Jonathan, whom he understood went to sea.

It is a very singular fact, that an illiterate Irishman should be so well able to conceal the tone and dialect of his country, as to pass for a moment for a Connecticut man? And yet while the cause was pending before Judge Bee, the prima facie evidence was, that he was an American. The brogue has never yet been urged in proof.

I take this opportunity of mentioning that the other members of the House of Representatives were called, in expectation that it would be necessary for me, (as Mr. Gales the short-hand writer is in North Carolina) to authenticate certain declarations and expressions in the Congressional Register which I had mark'd for use, and to give information on some other points which I fully intended to have brought forward. But I soon found it impossible with prudence or effect, to take such wide ground. I thank the Gentlemen for their attendance.

#### APPENDIX NO. VI.

To shew that Dr. Priestley had a right to make use of the freedom with Mr. Adams which has given rise to this trial, I quote the following extracts from the letters of Mr. Adams to Dr. Priestley. I think this necessary in vindication of the character of Dr. Priestley himself, and it is evident there is nothing in these extracts but what will do honour to both.

"The people themselves we see are capable of persecuting a Priestly, as another people formerly persecuted a Socrates."

Letter of Feb. 19 1792.

"By a compliment which I hold very precious in your familiar letters to the inhabitants of Birmingham, I am emboldened to hope you will not be displeased to receive another copy of my Defence especially as that which was presented to you formerly has probably had the honour of sharing the fate of your

library. Col. Smith will take one from New York; and present it to you, with my sincere veneration." ibid.

" Although it would give me great pleasure to see you in America, yet I cannot but think your removal would be a great loss to the political and literary world."

May 12, 1793.

" But if any arrangements of the post-office, or other provision occurs to you, I beg you would mention it to me, for as I consider mankind in general under obligations to Dr. Priestly, I shall as one of them think it my duty to do whatever may be in my power to contribute to his convenience in life or his comfort in this country.

Nov. 21, 1794.

### TO JUDGE CHASE.

SIR

I address you, on the subject of my trial, because the Doctrines and assertions I object to, were particularly delivered by you. And tho' judge Peters sat upon the Bench, you were the presiding judge and prominent person delivering the opinions that were given.

I hope this appeal to the public on the points whreon we differ, will not be deemed improper. Lord Mansfield submitted to have his Doctrines attacked and scrutinized\* and you may be as liable to err as he was. Indeed notwithstanding the sarcasms thrown out against my professional talents (with what propriety we shall soon see) they can hardly be called in question for differing in opinion from judge Chase or judge Peters, who not only differ from each other but from themselves. You Sir, are averse to considering the common law as part of the law of the United States; † judge Peters admits it—you incline to issue but not to enforce, subpoenas to members of the Legislature; judge Peters is against issuing a process he cannot enforce—you, think it right not only to take for granted the existence of political parties, but thro' my fine, to tax the one in favour of the other; judge Peters more wisely, does not presume to know any thing but what passes in Court, or to care whether I pay a fine with the Money in my pocket, or with the Money I may borrow—Both of ye in my case, (like the Senate in Duane's) determined a new point without condescending to hear argument upon it: You did the same afterward in the case of Fries, by pre-determining with the deliberation of a written opinion, the legal question of treason; and yet the next day your recalled you papers, withdrew your refusal to hear counsel on the point, and pressed them against your own solemn decision, to tread without fear, the forbidden ground. After

\* By Andrew Stuart in the Anglesea cause, and in the Douglas cause, By Mr. Fearne in the case of Perrin and Blake.

† Whoever will take the trouble of perusing that fine specimen of unanswerable reasoning by Mr. Maddison, *The Proceedings of the Virginia Assembly on the answers of sundry States, &c.* (Printed by Carey, Philadelphia) will be satisfied that the question about the common law forming a part of the law of the United States, is settled as far as sound argument can settle it.

differences of opinion so repeated and so recent—after conduct so wavering and indecisive, I may safely venture to assert that your insinuations respecting my legal capacity may be controverted without presumption. While I am in court, I know it is my duty, and I feel it my inclination to submit with deference to the *ex Cathedra* decisions you are authorized to pronounce; but that deference to the constitutional expounders of the laws, does not deprive me of the right to call up in self defence their erroneous opinions before the more solemn tribunal of the Public.

I shall now proceed to the points of difference between us.

I. I claimed a right to the attendance of the President under process of the court.

When an opinion is once settled by the deliberate decision of a court, I think the Judges are right not to permit counsel to travel over beaten ground, or to re-urge the arguments and objections that have been already maturely considered and settled: it was for this reason I declined making any objection to the constitutionality of the sedition law, though I had no doubt of the validity of that objection. But I appeal to common sense and to professional experience, whether it is either proper or usual for a court to decide a *new* and a doubtful point, without hearing argument, when requested by a party concerned? Whether the decision of the court was right or not, your refusal to hear me on the subject, cannot be defended. Patience is required in a judge at all times, particularly on the decision of new cases, particularly toward a defendant on an indictment, and particularly when he pleads for himself. All these considerations should have induced you to have listened to the following observations that then occurred to me.

Your objection was, that being an indictment for a false and malicious libel against the President, he could not be called upon to give testimony at all: for it was improper to subject him to questions that might make him accuse himself of mal-administration.

I reply first, that the President is not the prosecutor here. That there is no ground for considering him as a legal party to this indictment, and it might be brought without his consent. It is not the United States on the prosecution of the President against Thomas Cooper, but the United States on the prosecution of the Attorney General *ex officio*, against Thomas Cooper. Not being a party therefore, he might be examined.

I say secondly, that it is still further evident that he is not legally a party, for I could not demand, on such an indictment, to have a prosecutor indorsed.

I say thirdly, that *ex-officio* informations may lie, where the Attorney General has a right to call upon the person injured to support the prosecution by giving testimony on behalf of the United States: and farther that prosecutors or indictments are liable to be cross-examined by a defendant, whenever they are called as evidences, (as they very commonly are) in support of their own prosecution. So that the objections of your honour would avail in a considerable degree against common and known practice: but as I doubt whether they could be cross-examined out of the examination in chief, I do not rest on this argument.

Fourthly, the questions put, need not have been such as would induce any legal crimination by the answers. For instance, suppose I had ask-

ed the President, did you direct the present prosecution? did Mr. Stoddart consult you on his report respecting the Navy? Was you privy to and did you approve of Colonel McHenry's reports on the army? Did Mr. Liston or any person on the part of Great Britain, apply to you under the Treaty for the delivery of the Hermione sailors, tried before Judge Chase in the Jerseys? was there any communication between you and Judge Bee, previous to Mr. Liston's letter? Were you apprised of the case of the United States vs. Judge Lawrence? Surely the answers to those and many other questions relevant to the issue that might be framed, need not have included any legal crimination. For that is the point: a man is not relieved from a question because it may tend to shew that he has been mistaken or faulty; if the answer does not subject him to legal reproof, the question may be put.

Fifthly, I think I had a clear right to his evidence on a preliminary and collateral question; for instance, as we have no Gazette as yet printed by Royal authority in this country, I wanted to shew that the President had countenanced and given authenticity to Feno's Gazette. I wanted to bring my evidence completely within Rex v Holt. The President I believe could have enabled me to do this, and surely such questions as this point would have required, could not be objected to as within the reason of your decision.

Sixthly, Nor did your own ideas on the light in which the President was to be considered seem quite clear: This rejection of his testimony evidently goes on the supposition that he would have appeared too much in the character of a prosecutor, and yet you decided that I was mistaken in considering him in that light. But your honour mistook me: I knew that he was not the legal, but I had a right to look upon him as the actual prosecutor.

I know that men of eminence at the bar think you were wrong in deciding the point against me; but it may admit of doubt, for the case is new, and no analogous case can occur under Fox's Libel Bill.

But can it admit of doubt whether you ought to have heard arguments on so new a point?

II. You denied that I had any right to copies of official documents.— You said you knew of no law that would entitle me to them.

Be good enough Judge Chase to read the following extracts from the act of Congress entitled "An act to provide for the safe keeping of the acts, records, and seals of the United States and for other purposes."

"Approved September 15th. 1789.

"Sect. 5 The said Secretary (of State) shall cause a seal of office to be made for the said department (of State) of such device as the President of the United States shall approve; and all copies of records and papers in the said office, authenticated under the said seal shall be evidence equally as the original record or paper." The next section prescribes the fees to be paid by persons requiring copies, viz. 10 cents per 100 words, and 25 cents for the seal.

I take the liberty of referring you next to the case of Rex vs. Holt. 5 T. R. 442. so often quoted, wherein Lord Kenyon declares "That the Gazette is evidence of many acts of state, cannot be doubted.\*\*\*\*\* These

" are acts done by and to the King in his regal character : they are the addresses of different bodies of subjects going to offer their loyalty at the foot of the throne and received by the King in his public capacity.—  
" They then become acts of State, and of such acts announced to the public in the gazette, the gazette is evidence in courts of justice.

Hence I had a right to demand copies of these as PUBLIC PAPERS.

Take the trouble of reading the following determination of Dr. James Marriot in the case of the Ship Columbus.—Collect. Jurid. page 68.  
" On the opening of this cause it was suggested by the counsel for Mr. Le Mesurier, that frequent applications had been made by him to Government for a copy of the order of counsel.—Now if such an order had existed and had been produced it would have prevented this flood of litigation. Mr. Le Mesurier would not have heard so many brilliant arguments either for or against himself, nor the court have had the fatigue of watching them with extraordinary attention.—In any cause, where the crown is a party, it is to be observed, that the Crown can no more withhold evidence of documents in its possession than a private person.— If the court thinks proper to order the production of any public instrument, that order must be obeyed.—It wants no Insignia of authority derived from the Crown.—The order will enforce itself.—For if a party suing refuses to produce a necessary document, what follows ? He shall take nothing by his petition."

All this was before me on the table ; the reference marked.—Why did I not quote it ? Because I should have been again liable to the charge of impropriety and indecency and perhaps with additional reproach, for again venturing to doubt your honours decision.—We are now before the public—let them judge whether you or I more deserve the professional sarcasms you thought fit to aim at me.

III. The documents I read seemed permitted on the part of your honours rather as a matter of indulgence than of right. I was without counsel, and you were graciously pleased to permit me to say and to quote many things that a professional advocate would have been restrained from. The chief evidence I wanted was Fenno's paper ; in which all my quotations were marked ; though I used the selection of addresses for temporary convenience.

Now I say, I was not obliged to your honours for the permission to read Fenno's paper—For 1st, I contend still that on a political trial that evidence to which the public constantly resorts is *prima facie* evidence to go to a jury. 2dly, Fenno's Gazette approaches so near to the case of a Royal Gazette that it is hardly distinguishable. It is a paper approbatory of the measures of government. Fenno is printer to the senate ; and had I not been restrained from examining the President, I think I could have proved that Fenno was his printer too. But 4thly, it was the best evidence the nature of the circumstances would admit, for the higher grades of evidence were refused me by your honours' decision, and by the illiberal conduct of Mr. Adams. If I was interdicted from procuring better, this became the best.

IV. You denied the President's message to be evidence, because I had it not by me at the time I wrote.—I think this objection is founded on a mistake of the issue, which was, *true or not true* generally ; without reference

to time. But having dwelt on this before I shall not repeat my arguments here.

V. My allegation that the *notoriety* of political fact, was a proper circumstance to be judged of by the jury, seemed evidently by your manner, to be permitted out of indulgence and compassion, while on my part I submitted to what passed, out of deference to the high character with which you were cloathed; but a man must be very ill read in the trials for sedition, and must very carelessly have attended to Mr. Rawle's speech and your charge, not to be convinced that notoriety of political fact must sometimes be taken for granted: how far it ought to avail, is circumstance to the jury. If on trial where character can be given in evidence—if on trials as in England on prescriptive road-causes—if on trials respecting marriage, common reputation may be stated as evidence, how much more proper is it on the general facts of public politics. The hardship and absurdity of insisting on strict legal evidence in such a case, is in my opinion too glaring to be enlarged upon.

VI. You object to charging the navy on the President, and yet you must have known, that the measure was grounded on the President's speeches and on Mr. Stoddard's report. *Qui facit per alium facit per se.* That it is a permanent establishment appears from the purchase of woods and islands for the use of the navy. See the reports and acts of Congress relative to the navy. But if it met with no more than his sanction, my position was true, independent of the proof I adduced.

VII. I must join issue with you on the subject of the army, though I much dislike the harsh terms wherein you have expressed the alternative. I think you are wrong; for, 1st, a standing army, as I have before stated, is a body of troops existing in permanent discipline in contradistinction to the periodical discipline of militia forces. The term is English, used in this sense by every author who has written on the subject in that country, and particularly in the legislative debates and the lords' protests.

2dly, The appropriations for the standing army in that country as well as the mutiny bill, are annual, as appears by the annual "Distribution of Grants," presented to the house of commons of Great-Britain.

3dly, The soldiery *there* are enlisted for life, although the appropriations are annual. *Here* they are enlisted on the PERMANENT ESTABLISHMENT (I'Henry's Rep. 13th Jan. 1800, p. 35) for five years. No man is enlisted for 1, 2, 3 or 4 years—hence there is a regular succession and supply kept up. So are the instructions of enlistment.

4thly, The Terms made use of for that army in the reports of colonel M'Henry, and in the act of congress entitled, "An act to ascertain and fix the Military establishment of the United States," are establishment, permanent establishment, to keep up by enlistments, &c. You ought to have known this. The five-year army is not a five-year army, but a permanent army, where every soldier enlisted, is enlisted for the term of five years from the date of his enlistment.

VIII. I cannot account for your mode of arguing the case of JONATHAN ROBBINS, but whoever attended the trial will be able to account why I did not examine you on the business of the Hermione seamen indicted for piracy before you in Jersey. How happens it in the first place that you so strangely omitted to notice the prominent charge of *Piracy*? A charge that came before yourself in the case of the other seamen of the Hermione;

a charge that came before Judge Bee in Robbins's case, that was specifically recognized by the President and by Mr. Pickering in the message noticed by myself, and which you must know gave indisputable jurisdiction to the circuit court. Surely you ought to have known, and ought not to have omitted this strong point.

A pirate is described as *Hottis humani Generis.* Moll. I. 1. c. 4. § 1.— He is not an offender against a particular country, but against all countries, and therefore all countries have jurisdiction. This doctrine is recognized in the following cases of English law : “ The king of England hath not “ only an empire and sovereignty over the British seas for the punishment “ of piracy ; but in concurrence with other Princes and States, an un- “ doubted jurisdiction and power in the most remote parts of the world. “ If any person therefore, native or foreigner, Christian or infidel, Turk “ or pagan, with whose country we are in amity, trade or correspondence, “ shall be robbed or spoiled in the narrow or other seas, whether the Medi- “ terranean, Atlantic, Southern or any branches thereof either in this or “ the other side of the line, it is piracy within the limits and cognizance of “ the admiralty sessions. Sir Ch. Hodge's charge. Old Bailey 8. w. 3. “ Hawk. pl. c. 152, of Dublin ed. 1788.”

“ The Captain of a French merchantman, having put into a port in Ireland, was accused by his crew of robberies on the seas, and fled. His ship and goods were considered as having belonged to pirates. The French consuls presented memorials requiring the cause to be remanded to the natural judge, as was pretended, in France. But the king and his counsel finally adjudged that he was sufficiently founded in point of jurisdiction, to confiscate the ship and goods, and to try capitally the captain himself, had he been in hold ; the matter of Renvoy being a thing quite disused among princes ; and as every man by the usage of our European nations is *jusitiable* in the place where the crime is committed, so are pirates, being out of the protection of all laws and privileges, and to be tried in what part soever they are taken. 2. Wooddeson, § 428. Sr. Leol. Jenk. Rep. 714.

The jurisdiction having thus attached to the Circuit court, and having been acted upon, ought not to have been surrendered at the advice or request of any man whatever.

Had the crime been murder alone, as your charge implies, I incline to think your doctrine would have been well founded. But you know, or ought to know, that where an inferior crime flows from a superior, the former is merged in the latter. Thus, Trespass is merged in Felony, Assault and Battery, in Riot. In the first section of Molloy's chapter on piracy, he describes a pirate as a sea thief : *hottis humani generis*, who, to enrich himself, either by surprise or open force, sets upon merchants and others trading by sea, ever spoiling their lading, if they can by any means get the mastery, *sometimes bereaving them of their lives*, and sinking their ships \*\*\*\* against these, any prince hath power to make war, though they be not subject to his government. Molloy L. 1. c. 4. § 1. Grot. de Jur. Belli. L. 2. c. 20. § 40.

Hence it appears, that the court had jurisdiction : that the court acted upon it : that the court instead of deciding upon argument, adopted the opinion of the executive on two judicial questions : that the court listened

to and acted upon the advice and request of the executive in a case within judicial authority.

Again. Why was it that you did not notice the very strong case of the United States and Judge Lawrence? If it did not apply, why not say so? If it did, why not allow its proper force? Why give room to suppose it was too strong to be controverted?

IX. I complain of improper conduct in your summing up against me: I say (submitting to public opinion) that it is not a part of a judge's duty to argue a cause against a defendant on a penal prosecution—to notice the omissions of an Attorney General—to dwell upon circumstances of aggravation—to omit strong points of the defence, or to let the jury perceive a bias in the mind of the court. I say this is notoriously against the practice of the *English* Bench at least. It might have been pleasing to Mr. Pickering on your right hand, to Messrs. Read, Harper, &c. on your left, to Mr. Tracy behind you, to Messrs. Shaw, Stoddart and Mc'Henry in front of you, but I think, the public will not regard it with the same encomiastic placidity.

X. And that I may not omit any of the points of difference between us, I shall state that, tho' your objection to the *generality* of my affidavit, was perhaps in strictness of law defensible, yet it was not conformable to the practice I have witnessed in the courts here: where a party is not entitled according to the rules off practice, to put off a cause, and where an inconvenience will arise to his opponent from deferring it, or where there is ground to suspect intentional delay, there the courts always require a special affidavit, going to the points that the absent witnesses are required to prove; but where no affectation of delay is imputable, and where a party has not claimed the cause to be deferred before, a general affidavit is not usually objected to.

I had a right from the common indulgence, to have put off my trial till next term, and therefore was compleatly within the equity of what I understood to be, the rule of practice here: but I shall not deny your right to insist as you did, though it was certainly stretching the law to the utmost.\*

Your charge of indecency for presuming to offer arguments against the decision of the court, prevented me from usingat that time the authorities in my power. But you have now an opportunity, if you please, of descending into the arena of the public, a mark of attention on my part that you owe to the situation you fill. You have thrown out the challenge of professional imputation and it is accepted.

THOMAS COOPER.

Prison of Philadelphia, May 1, 1800.

\* In the case of the King v. Tandy and Morris, Feb. 12, 1799, in the King's Bench of Ireland, "the defendants were again brought up," and their counsel moved to postpone the trial till next term, stating the absence of several material witnesses at Hamburgh. Though in this case it should appear that the prisoners were brought up at the second term, which I was not; though the affidavit did not state that the witnesses had been sought for or served with process, which mine did; although there was reasonable doubt whether they could be procured at all—a doubt which did not exist in my case; though the offence there, was much higher than the charge against me, yet the attorney general objecting to the legal sufficiency of the affidavit, allowed the trial to be put off on that ground. This case is reported by Brown, Phil. Gaz. April 21, 1800.

#### ERRATUM.

*In the title page this trial is said to be printed for the author: this is a mistake: it is not printed for me. T. C.*